(17,370.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 264.

THE AMERICAN SUGAR REFINING COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA AND JOHN BREWSTER, STATE TAX COLLECTOR, SECOND DISTRICT, PARISH OF ORLEANS, STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

AMERICAN SUGAR REFINING COMPANY, Plaintiff in Error,
versus
THE STATE OF LOUISIANA and JOHN BREWSTER, State Tax Collector, Second District, Parish of Orleans, State of Louisiana, Defendants in Error. } No. 12877.

Thomas J. Semmes for plaintiff in error.
E. H. McCaleb, Jr., for defendants in error.

Writ of error to the supreme court of the State of Louisiana from the Supreme Court of the United States of America returnable at the city of Washington, D. C., within thirty (30) days from the seventeenth (17th) day of March, A. D. 1899.

Transcript of Record.

1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Civil District Court for the Parish of Orleans.

Appeal from the honorable the civil district court, division C, from judgment rendered May 30, 1898, and signed June 3, 1898.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925. Civil District Court, Parish of Orleans, Division C—Honorable F. A. Monroe, Judge.

E. H. McCaleb, Jr., Esq., attorney for the State of Louisiana, plaintiff and appellant.
Thomas J. Semmes, Esq., attorney for The American Sugar Refining Co., defendant and appellee.

Rule on the American Sugar Refining Company to Show Cause Why They Should Not Pay $21,000 as a License for Carrying on Business.

2 Filed November 18, 1897, and entered on the minutes of same date.

Civil District Court, Parish of Orleans, Division C—Honorable F. A. Monroe, Judge.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

To the honorable the judge of said court for the parish of Orleans:

The petition of John Brewster, tax collector of the 2nd district of the city of New Orleans, through Edwin H. McCaleb, attorney-at-

law, appointed by his excellency the governor of Louisiana to aid the tax collectors of the parish of Orleans in the collection of licenses for said parish, and on suggesting to the court that the American Sugar Refining Company is conducting the business of refining sugar & molasses at Levee, Front & N. Peters St. without any license from the State of Louisiana, and that its gross receipts exceed the sum of two million five hundred thousand (2,500,000) dollars for each year of 1892, 1893, 1894, 1895, 1896, and 1897 during said years within which said business was conducted, and on further suggesting that all persons who conduct any business without obtaining a license from the State before the first day of March of each year are declared delinquent, and on further suggesting to the court that there is due by defendant to the State of Louisiana the sum of twenty-one thousand (21,000) dollars, with 2 % per month interest from March 1st, 1892, on thirty-five hundred dollars and 10 % attorneys' fees on said amount and interest; with 2 % per month interest on thirty-five hundred dollars from March 1st, 1895, and 10 % attorneys' fees on said amount and interest; with 2 % per month interest on thirty-five hundred
3 dollars from March 1st, 1896, and 10 % attorneys' fees on said amount and interest; with 2 % per month on thirty-five hundred dollars from March 1st, 1897, and 10 % attorneys' fees on said amount and interest, as a license for the years 1892, 1893, 1894, 1895, 1896, and 1897, together with first lien and privilege on the property of defendant, movable and immovable:

It is ordered that defendant, American Sugar Refining Co., thro' its proper officer, do show cause, on Monday, —— —, 1897, at 11 o'clock a. m., why it shall not pay twenty-one thousand (21,000) dollars to the State of Louisiana for a license for the privilege of conducting the above-mentioned business during the years of 1892, 1893, 1894, 1895, 1896, and 1897, with 2 % per month interest on thirty-five hundred dollars from March 1st, 1892, and 10 % attorneys' fees on said amount and interest; with 2 % per month interest on thirty-five hundred dollars from March 1st, 1893, and 10 % attorneys' fees on said amount and interest; with 2 % per month interest on thirty-five hundred dollars from March 1st, 1894, and 10 % attorneys' fees on said amount and interest; with 2 % per month interest on thirty-five hundred dollars from March 1st, 1895, and 10 % attorneys' fees on said amount and interest; with 2 % per month interest on thirty-five hundred dollars from March 1st, 1896, and 10 % attorneys' fees on said amount and interest, and with 2 % per month interest on thirty-five hundred dollars from March 1st, 1897, and 10 % attorneys' fees on said amount and interest, and all costs of these proceedings, or be enjoined and restrained from the carrying on of said business until the said license, interest, ten per cent. attorneys' fees thereon, and costs of court be paid.

And that defendant, American Sugar Refining Co., be
4 required to show further why this rule should not be made absolute and judgment rendered in favor of the State of Louisiana for twenty-one thousand (21,000) dollars, with interest as

above set forth, ten per cent. attorneys' fees, and costs of court, and said injunction be perpetuated.

Petition of State Tax Collector for State License, Interrogatories Annexed, and Order Thereon.

Filed November 18, 1897.

Civil District Court for the Parish of Orleans.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINERY CO. } No. 54925.

To the honorable the civil district court for the parish of Orleans:

The petition of John Brewster, tax collector of the 2nd district of the city of New Orleans, through Edwin H. McCaleb, attorney-at-law, appointed by his excellency the governor of Louisiana to aid the tax collectors of the parish of Orleans in the collections of licenses for said parish, respectfully represents:

That in the cause numbered and entitled as above proceedings have been taken against the above-named defendant to collect the amount due by said defendant to the State of Louisiana as license for carrying on business, as set forth in a rule which has been taken herein upon said defendant, and to compel said defendant to pay the State license for carrying on said business, and that the answers of said defendant to the annexed interrogatories are material
5 and necessary to enable plaintiff to make out its case herein.

Wherefore petitioner prays that this petition be filed, and that the above-named defendant be ordered to answer, under oath and categorically, in open court, on Monday, the 29th day of November, 1897, at 11 o'clock a. m., each of the annexed interrogatories in order that the plaintiff may make use of the said answers in support of the claim and demand aforesaid for State license due by said defendant, and that in default of such answers being made by said defendant the answers to said interrogatories be taken for confessed.

(Signed) E. H. McCALEB, JR.,
Attorney for Plaintiff.

Interrogatories.

1. Have you not been conducting and carrying on business during the year- 1892, 1893, 1894, 1895, 1896, & 1897, as set forth in the rule taken on you in these proceedings, and are you not now conducting and carrying on said business?

2. Do not your gross receipts from said business exceed the sum stated in said rule?

3. *Were* not your gross receipts from said business during each of the years 1892, 1893, 1894, 1895, 1896, & 1897 exceed two million five hundred thousand (2,500,000) dollars?

4. Do you not owe your State license for 1892, 1893, 1894, 1895,

1896, & 1897 for conducting and carrying on business, as set forth in said rule, and does not the total sum due by you amount to the sum claimed in said rule, with interest on said sum, at the rate of two per cent. a month, from March 1st, 1892, ten per cent. thereon for attorneys' fees, and all the costs of these proceedings?

6 5. Do you owe any State license for the years 1892, 1893, 1894, 1895, 1896, & 1897; if so, how much do you owe, and for carrying on or conducting what business?

6. Are not all the statements and allegations in the rule taken herein on you true? If any allegation be untrue or incorrect, set forth the error and correct the same.

Order.

Let this petition be filed and let a copy thereof and of the annexed interrogatories and of this order be served upon the above-named defendant, and it is ordered that said defendant answer in open court on Monday, the 29th day of November, 1897, at 11 o'clock a. m., under oath and categorically, the interrogatories herein propounded, and in default of such answers being made by said defendant, let the answers of said defendant to said interrogatories be taken for confessed.

New Orleans, November 22nd, 1897.

(Signed) F. A. MONROE, *Judge.*

Rule Continued.

Extract from the Minutes of Division C.

MONDAY, *November* 29, 1897.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

7 By consent of counsel and upon proper showing, the rule in this case fixed for this day was continued to Monday, December 6th, 1897, at eleven o'clock a. m.

Exception and Answer of Defendant.

Filed December 6th, 1897.

Civil District Court, Division C.

THE STATE OF LOUISIANA
vs.
THE AMERICAN SUGAR REFINING CO. } No. 54925.

Now comes the defendant company and excepts to the proceeding against it by rule, and for exception says that the tax collector, at

whose instance this rule has been taken, has no authority to proceed by rule, because the defendant company has never been entered on the license register which tax collectors are required by law to keep, nor has the defendant company ever been placed on the list of delinquent license-payers which the tax collector is required by law to furnish to the attorney appointed by the governor to enforce the payment of licenses of delinquents.

In case the foregoing exception be overruled, and not otherwise, and re-averring its right to insist on said exception, this defendant for answer to said rule says:

That its business of refining sugar and molasses is exempt from the payment of any license tax for the years mentioned in the rule, because its said business is and always has been that of refining sugar and molasses and none other, and as such it is and always has been one of those manufacturers enumerated in article 306 of the constitution as entitled to exemption from license taxes, and, furthermore, its business is and always has been conducted
8 by means of mechanical appliances & apparatus, and it is further exempted by said article 306 from payment of license taxes as a person engaged in a mechanical pursuit.

This defendant further says that the act No. 150 of 1890 violates the Constitution of the United States and is void in so far as it attempts to impose a license tax on this defendant, because said act denies to this defendant the equal protection of the laws of the State, inasmuch as said act does not impose equally a license tax on all persons engaged in the business of refining sugar and molasses, but discriminates in favor of planters who refine their own sugar and molasses and in favor of planters who granulate syrups for other planters during the rolling season, and therefore said act conflicts with the fourteenth amendment of the Constitution of the United States, which prohibits any State from depriving a person of his property without due process of law and from denying to any person within its jurisdiction *of* the equal protection of the laws.

Wherefore this defendant prays to be hence dismissed with costs.

(Signed) THOS. J. SEMMES,
Att'y for Defendant.

STATE OF LOUISIANA, }
Parish of Orleans. }

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

9 Present: Mr. E. Howard McCaleb, Jr., att'y for the State; Mr. Thos. J. Semmes, attorney for the American Sugar Refining Company.

Note of Evidence Taken in the Above Numbered and Entitled Cause on the 6th Day of December, 1897, Before Hon. Frank A. Monroe, Judge.

Admission by Mr. Semmes & Mr. McCaleb, counsel for def't and pl't'ff.

It is admitted that the tax collector did not enter the defendant company as a license-payer upon his license register; nor did he report said company as a delinquent to the attorney appointed under the act No. 150 of 1890, except in the year 1896 the attorney verballed suggested to the tax collector to report said company as a delinquent, which he did verbally. The attorney then notified the company of its alleged delinquency in 1896 for that year. In 1897 the attorney notified the company three days before this suit was brought, but in that year the company was not entered as a license delinquent on the license register in the collector's office, nor placed upon the delinquent list submitted to the said attorney in the month of April, A. D. 1897.

The counsel for pl'ff objected to the admission of any evidence on the exception, on the grounds that it is *res inter alios acta* and irrelevant.

The court overrules the objection and allows the admission above mentioned to be received.

To which ruling the counsel for pl'ff excepted and reserves the note in lieu of a bill of exception.

Correct.

T. J. S.

E. H. McC.

10 (Endorsed:) Civil district court. State of Louisiana *vs.* Am. Sugar Refining Co. Note of evidence. Filed December 7th, 1897. Joe Garridel, d'y clerk.

Exception Submitted & Case Continued.

Extract from the Minutes of Division C.

MONDAY *December* 6, 1897.

Present: Hon. F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

In this case, after hearing pleadings and evidence and arguments of E. H. McCaleb, for plaintiff, and T. J. Semmes, Esq., for defendant, on the exception this day filed by defendant, the court took said exception under advisement, and the rule for license was continued, to be again fixed for trial.

Opinion of the Court Overruling Exception.

Filed January 3rd, 1898.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

11 The State, through John Brewster, tax collector, proceeds by rule to collect from the defendant an amount of money aggregating, in principal, $21,000.00 for licenses, at the rate of $3,500 per annum, for the years 1892, '3, '4, '5, '6, '7, together with certain costs and charges, the averments of the rule being that defendant has during said years been engaged in the business of refining sugar & molasses in New Orleans; that its gross receipts exceed $2,500,000 per annum; that it has obtained no license, but, upon the contrary, became delinquent with respect thereto upon March 1st of each of said years.

Respondent excepts on the ground that "the tax collector at whose instance the rule has been taken has no authority to proceed by rule because the defendant company has never been entered on the license register which tax collectors are required by law to keep, nor has the defendant company ever been placed on the list of delinquent license-payers which the tax collector is required by law to furnish to the attorney appointed by the governor to enforce the payment of licenses by delinquents." Reserving the benefit of this exception, the defendant answers, claiming exemption under article 206 of the constitution and attacking the statute under which the license is claimed, upon the ground that it is in violation of the 14th amendment to the Constitution of the United States.

The exception alone is now before the court, & for its purposes the following written admission is made, counsel for the State, whilst admitting the facts, reserving his rights under certain objections (which were overruled) to the admission of the evidence: "It is admitted that the tax collector did not enter the defendant
12 company as a license-payer upon his license register, nor did he report said company as a delinquent to the attorney appointed under the act No. 150 of 1890, except in the year 1896 the attorney verbally suggested to the tax collector to report said company as a delinquent, which he did verbally. The attorney then notified the company of its alleged delinquency in 1896 for that year. In 1897 the attorney notified the company three days before this suit was brought, but in that year the company was not entered as a license delinquent on the license register in the collector's office, nor placed upon the delinquent list submitted to said attorney in the month of April, A. D. 1897."

The proposition that it is a condition precedent to the right to proceed by rule to collect licenses as contemplated by act 150 of 1890, that the tax collector shall first enter the name of the delinquent upon the tax register and shall also include the name of such delinquent in the list to be furnished to the attorney, is founded not upon any specific language to be found in the statutes, but upon an inference or theory of construction which, upon a deliberate consideration of the statute in question, cannot, in my opinion, be sustained.

The obligation to pay a license is imposed, by sec. 1 of the act, upon every person engaged in business except those expressly exempted by the constitution.

The time within which the license is to be paid and the date at which it becomes delinquent and subject to costs & penalties is fixed by section 2. The various sections following sec. 2, up to sec. 18, are devoted to the establishment of a basis as to amounts upon which licenses are to be paid. Sec. 18 then provides "that if
13 any business shall be conducted without a license in cases herein provided the officers whose duty it is to issue licenses shall, through the attorney herein provided for, on motion in the proper courts, as provided in the constitution and which shall be without deposit or advanced costs, take a rule on the party or parties doing such business to show cause on the fifth day, exclusive of holidays, after the service thereof, which may be tried out of term time and in chambers and shall always be tried by preference, why said party or parties should not pay the amount of the license claimed and penalties or be ordered to cease from further pursuits of said business until after having obtained a license; and in case said rule is made absolute the order thereon rendered shall be considered a judgment in favor of the State for the amount decreed to be due by the defendant for license and penalty and costs, heretofore & hereinafter provided for, and shall be executed in the same manner as other payments, and every violation of the order of court shall be considered as a contempt thereof and punished according to law."

It will be observed that the right to proceed by rule thus specif-

ically authorized is subject by the terms of the section containing the grant to but one condition which can be considered a condition precedent, to wit: That a business upon which the statute imposes a license shall have been conducted without such license. The question then remains whether such right is made dependant upon other conditions by subsequent provisions of the law.

Section 19 provides that the only legal evidence that a license has been paid shall be the license itself, issued by the auditor, with a reservation of the right to make oral proof in case of its loss or destruction.

14 Section 20 requires the tax collector to keep a book in which he shall record the sworn statements of persons subject to license.

Section 21 authorizes the collectors to administer oaths, &c.

Section 22 provides "that the tax collectors * * * are hereby required to keep a license register in which they shall enter the names of every person, association of persons, business firms or corporations, with the trade, profession, vocation, calling or business pursued, the class and graduation of the same, the amount of the license hereon, and the date of the collection or payment thereof. On the 31st day of December of each and every year the said tax collectors shall make and forward to the auditor of public accounts a full and complete transcript of said license registers, a copy of which transcript the auditor of public accounts shall lay before the General Assembly at its regular session of each year, and shall file the same in his office for his future reference or use."

There is no intimation in this section that the register thus required to be kept shall be completed as a condition precedent to the effort which the collector is required to make to collect the licenses. Upon the contrary, the register is required to show, among other things, the payment of the licenses, which, in many cases, can only be arrived at after the legal proceedings necessary to enforce such payment. The section in question provides a method of accounting by the tax collector, not for what he may do, but for what he has done, and does not suggest the idea that the failure so to account shall have the effect of relieving the license debtor of the obligation to pay, imposed by preceeding sections, or of relieving the tax collector and the attorney of the obligation to enforce

15 such payment, since it is this very payment that the tax collector is to render an account of by means of his tax register.

Section 23 imposes a penalty upon the tax collector for violating any of the provisions of the act.

Section 24 provides "that the governor of the State, immediately after the promulgation of this act, shall designate for each parish an attorney-at-law, whose duty it shall be to aid the tax collector or tax collectors in the parish for which he is appointed in the collection of the licenses provided for by this act; and upon all licenses & penalties collected through the agency of said attorney the delinquent owing the license shall pay a commission to him.

* * * * * * *

"On the first day of March of each year the tax collector shall deliver to the attorneys herein provided for a complete list of all the delinquent license-payers, together with their location and kind of business, and the attorney shall individually proceed to collect same in accordance with this act, and if not collected within thirty days from date of delivery of lists by the collectors of taxes, it shall be the duty of said attorneys to render a written report giving the reason for non-collection to the collectors, whose duty it shall be to forward such report to the auditor of public accounts.

"Provided: that in the parish of Orleans, the said attorney shall receive a commission of five per centum upon the aggregate amount of license & penalties so collected and paid over to the tax collector, and no more."

Section 25 provides "that if any tax collector or officer
16 whose business it is to issue State licenses shall through incompetency, negligence, or fault on his part, fail to enforce the procuring or rectifying thereof by persons required to have them, he shall be responsible on his bond for all damages to the State arising therefrom."

It can hardly be said that the failure of the tax collector to include in the list which he is thus required to furnish the attorney upon the first of March of each year the name of a particular person engaged in business relieves such person of the liability for the license, since, in the first place, it is not so intimated, and the negligence of a State officer in enforcing the payment of a tax is not one of the grounds of exemption provided in the constitution; and, in the second place, the act contemplates & provides for the payment of license by persons who go into business after the first of March, and whose names could not, therefore, appear upon the list to be furnished at that date. It is evidently the purpose of the act that the attorney, whose appointment is provided for, should aid the tax collector in the collection of all licenses which become delinquent, whether the individual owing such lincense goes into business at the beginning of the year or after March 1st or after July 1st, in which latter case he owes but half year's license. True, it is the duty of the collector to make a list of all those who are in business before March 1st, but his failure to discharge this duty, whilst it may subject him to a penalty if the State suffers damages, does not relieve him of the obligation to collect the license if he can, nor does it relieve the attorney of the obligation to aid him in such collections.

In McGuire *vs.* Vogh, 36 A., 812, the supreme court said:
17 "The mode of or machinery for collecting taxes upon property is by the sale of it, if after twenty days' notice payment is not made. A license could not be collected by the sale of an occupation, and it is upon an occupation that the license is imposed. For that reason, doubtless, a rule is authorized to be taken on motion against the party who has not obtained his license to show cause why he shall not stop his business—Acts 1880, p. 152—and we see no reason why the rule should not also embrace the collec-

tion of the license, although it is not prescribed as the mode of collecting licenses, nor is it the only machinery that can be used."

And in State *ex rel.* Paquet *vs.* Judge, 49 A., 764, the proceeding by rule to collect a license under act 150 of 1890 was sustained.

There is nothing in the act which limits the right to proceed by rule to the license of the current year; hence, it being assumed for the purposes of the present exception that licenses were due and are unpaid for the years '92, '93, '94, '95, '96, and it being ascertained that the collection of licenses which are due and unpaid may be enforced by rule, I am of opinion that the right to enforce collection in that manner may be exercised as well with respect to licenses which are past due as well for preceding years as for the current year; at all events, if, as in the instant case, the delinquent is still engaged in the business for which he owes the license, so that the injunction contemplated by the law can be applied.

The exception should therefore be overruled.

Exception Overruled.

Extract from the Minutes of Division C.

18 MONDAY, *January* 3, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING Co. } No. 54925.

For the reasons assigned in the written opinion of the court this day delivered and filed, the law being in favor of plaintiff and against defendant,—

It is ordered and decreed that the exceptions of the defendant be dismissed and overruled at its costs.

Questions asked of Mr. Geo. S. Eastwick, manager — the American Sugar Refining Company, New Orleans, by Mr. McCaleb, representing the State of Louisiana.

Q. 1. Does the total value of sugar purchased by your company for each year from 1892 to 1896, inclusive, of the grades shown by samples # 1, # 2, # 3, # 4, # 6, # 7, amount to or exceed $2,500,000?

A. 1. Amount will exceed $2,500,000.

Q. 2. If you subtract from your total sales for each year from 1892 to 1896, inclusive, the value of your sales of cube sugar, will the remainder amount to or exceed $2,500,000?

A. 2. Amount will exceed $2,500,000.

GEO. S. EASTWICK, *Manager.*

19 Civil Dist. Court, Div. "C."

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 54925.

Testimony and Notes of Evidence Taken on the Trial on Monday, January 10th, 1898, Before the Hon. F. A. Monroe, Judge.

Present: E. Howard McCaleb, Jr., for pl'ff.
" Hon. T. J. Semmes, for def't.

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GEORGE S. EASTWICK, Esq., a witness, who, being first duly sworn, did testify as follows:

Direct examination by Mr. MCCALEB:

Q. What is your name?
A. George S. Eastwick.
Q. You are the agent and manager of the American Sugar Refining Company?
A. I am manager and agent of the American Sugar Refining Co.
Q. Have you not been conducting and carrying on business during the years 1892, 1893, 1894, 1895, 1896, and 1897, as set forth — the rule taken on you in these proceedings, and are you not
20 now conducting and carrying on said business?
A. We have been carrying on the business of refining sugar during those years.
Q. Have you not also refined molasses during those years?
A. Yes; refined sugars, molasses, and concretes, etc.
Q. Do not gross receipts from said business exceed the sum stated in said rule?
A. Yes, sir.
Q. Were not your gross receipts from said business during each of the years 1892, 1893, 1894, 1895, 1896, and 1897 in excess of two million five hundred dollars?
A. Yes; they do exceed that; yes, sir.
Q. Do you not owe State license for 1892, 1893, 1894, 1895, 1896, and 1897?
A. No, sir; we don't. We claim exemption.
Q. For conducting and carrying on business as set forth in the rule?
A. No, sir.
Q. Does not the total sum due by you amount to the total sum claimed in said rule, with interest on said sum, at the rate of two

per cent. a month, from March 1st, 1892, ten per cent. thereon for attorneys' fees, and all the costs of these proceedings?

A. No, sir.

Q. Do you owe any State license for the years 1892, 1893, 1894, 1895, 1896, and 1897? If so, how much do you owe, and for carrying on and conducting what business?

A. I do not.

21 Q. Are not all the statements and allegations in the rule herein taken on you true?

A. The statement in regard to the business which we have carried on. The statement in regard to the amount of business we have answered in substance.

By Mr. Semmes:

Q. That is true?

A. Yes; that is true. The statement in regard to the fact that we owe license we hold is not true, because we claim exemption under the laws of the State of Louisiana.

By Mr. McCaleb:

Q. Exemption as what?

A. As manufacturers.

No cross-examination.

By Mr. Semmes: We now propose to establish the fact that the refining of sugar—that is, the license demanded here—is a manufacture, and therefore we are manufacturers, and as such are entitled to the exemption specified in the constitution; for that purpose I have had photographs made of the machinery and samples brought here of all of the various sugars, showing each process it goes through before it becomes an article of merchandise—before it is refined sugar.

I have also brought the superintendent of the refinery for the purpose of having him give his testimony as to these various processes. The photographs are numbered and the samples are numbered, and I would ask the witness when he testifies in regard

22 to any photograph or any sample to speak of it by number when he alludes to it.

Agreement.—It is agreed that in case of an appeal that the samples and the photographs may be carried up to the Supreme Court without being copied into the record, the sole object of the testimony being to explain the methods pursued which result in the production of refined sugar as an article of consumption.

Admissions.—It is admitted that the photographs are correct representations of the machinery in the refinery, and that the samples are true and correct samples of the saccharine matter which is worked up and manufactured in the refinery.

JOHN MCFETTERIDGE, Esq., a witness on the part of the defendant, who, being first duly sworn, did testify as follows:

Direct examination by Mr. SEMMES:

Q. Mr. McFetteridge, you are the superintendent of the American Sugar Refining Company of this city, are you not?

A. Yes, sir.

Q. What has been your experience in the refining of sugar?

A. I have had experience running over fifteen years in the North and the past year in Louisiana.

Q. So you are thoroughly familiar with the business?

A. Yes, sir.

Q. The manufactory here consists of large buildings?

A. Yes, sir; a number of large buildings which grouped they comprise the refinery.

Q. A vast amount of machinery——

23 A. A very large amount of machinery.

Q. These photographs truly represent the pieces of machinery?

A. Yes, sir.

Q. Now will you please commence from the beginning and go through the whole process by which crude sugars are converted into refined sugar, and do so deliberately, and in making the explanation exhibit the samples to the court and the pictures of the machinery and explain the operation.

A. Well, necessarily some of the samples and the photographs, to make a th-rough explanation, will have to be shown together. Now to begin with the process in the refinery: we receive the sugar either from plantations in the State or from abroad, wherever produced, in barrels or bags, packages, in whatever way it may be packed. Our first process is to melt every bag or barrel of sugar so received in suitable vessels specially constructed for the purposes of melting sugar and bringing it to a tendency for refining. The first exhibit is a photograph of these melters and is No. 24.

By Mr. SEMMES:

Q. Explain the photograph.

A. Well, perhaps, if I am to explain it I had better take the photograph and show it. (Witness points out place on photograph.) Raw-sugar melters. This is the melter here, shown here, the end view and the side view of the melter, the sugar being elevated to the floor above.

By the COURT: The witness indicates a vessel which the court now marks "1" in black ink as being the melter.

The WITNESS: There are suitable storage apparatus—storage apparatus and steam water storage—and they are connected

24 with pumps run by power with shafting to pump the sugar after it is dissolved by these melters and conducting it to the upper stories of this building for another operation.

By Mr. SEMMES:

Q. Now show to the court that melted liquid sample after it passes through the process of melting.

By the COURT: Haven't you something showing the sugar before that?

A. Yes; we have a number of raw sugar. The first sample is No. 1. It is called Louisiana clarified sugar.

By the COURT: From No. 1 to what point contain samples of crude sugar?

A. From No. 1 down to and including No. 11.

By the COURT: The one with a liquid you don't call that crude sugar?

A. Yes, sir.

Q. Samples from No. 1 to No. 11 contain crude sugar and liquid before you have done anything with it?

A. Yes; as we receive it. Sample No. 12 would show this crude sugar melted before clarification and filteration.

Q. In the melter?

A. Yes; after it has been brought to the density we require it.

By Mr. SEMMES:

Q. Do you put all these sugars indiscriminately through the melter?

A. It would not be my practice to put them in all indiscriminately. It results better to follow high with lower grades, although they have to go through the same process.

25 By the COURT:

Q. It would give better results to melt each grade different if there is a mark between grades?

A. Yes; after this melting process.

Q. I see a sample, No. 5, I should imagine—what is that?

A. That is what is called the third grade of raw sugar.

Q. Is this the most inferior grade of sugar that you receive?

A. Yes; I judge by looking at it it is. We have some fourths even poorer in quality than these thirds. After this sugar has been melted and pumped to the upper story of one of our buildings we conduct an operation that we call clarification. This is done in blow-ups, and I have an exhibit of these raw-sugar blow-ups which is No. 25 of our exhibits.

By the COURT:

Q. What is a blow-up, and where is it on this vessel?

A. Here; iron tanks containing steam.

By the COURT: The witness indicates rear large iron tanks on photograph No. 25, which speaks for itself and need not be marked as blow-up.

The WITNESS: By the aid of suitable re-agents we coagulate the impurities and feed the liquid for the process of future filteration through these bags.

Q. Which bags?

A. I only show the tops of them.

By the COURT: The witness indicates on what appears to
26 be the floor of the apartment on this photograph No. 25 what he denominates bag filters, tops of bag filters, and the word "bag" is written on one of them in black ink.

By Mr. SEMMES:

Q. Show the court one of those bags.

A. This will illustrate the bag filterer. This coupling is on top of the head and the liquid is strained through these bags.

Offer of bag.—The defendant, through counsel, offers in evidence the bag exhibited to the court by this witness, and it is understood that all these photographs and samples, together with the bag just exhibited to the court and offered in evidence, are to go to the Supreme Court, in case of an appeal, in their original form.

The WITNESS: After leaving these blow-ups the liquid is strained through these bags, the purpose being to remove the mechanical impurities, the insoluble impurities, that exist in the liquid form of the sugar, and we exhibit here as photograph marked 26, and marked 26 by us, a picture of one of these bag filters. We have shown the top of the bag and the bag itself and now we show the casing.

By the COURT: The casing which contains these bags?

A. Yes, sir.

By the COURT: Where is it here?

A. Here is one side view; it is an iron box.

27 By the COURT: The witness indicates what appears to be a box or series of boxes, iron boxes, beginning in the foreground and extending back in this picture, which he states are the casings containing the bags, which together with these casings constitute the bag filters.

By the COURT: Continue, Mr. McFetteridge.

A. The process following this straining through the bags is the filtering process through bone-black filters, which are iron vessels in our establishment about twenty feet in height and ten feet in diameter. It was impossible for me to obtain a picture of the bone-black filters on account of the darkness in the place, and so we have taken a blue-print drawing. It is No. 28 of our exhibits, bone-black filters.

By Mr. SEMMES: We offer on the part of the defendant and ask to be filed this blue print of the bone-black filters, marked No. 28.

The WITNESS: This speaks for itself. Now, I might speak of the process and show these samples in connection with this fluid. This liquid, after it leaves the bag filters, is strained through the filters containing this burnt animal bone-black itself, and also after the liquid leaves the bone-black. I have already shown the liquid after going in the bag filters. Sample No. 14 is a sample of this burnt animal bone-black. This is used as an agent for decolorizing and removing impurities.

By the COURT: Have you any sample there of this liquid
28 after it passes through the bag filter and before it goes through the bone-black?

A. No, sir; the color is not perceptibly improved in the bag filter; it is not improved.

Q. The bag filter is clear of matter held in suspension?

A. Yes, sir.

By the WITNESS: Do you care, Judge, to see No. 14, the bone-black?

The COURT: No, sir.

The WITNESS: No. 15 is an exhibit of this raw sugar after being melted, clarified in the blow-ups, strained through the filters, and decolorized by bone-black before boiling in vacuum pan.

By the COURT: Do you bring all the grades of sugar from the lowest to the highest to that condition?

A. Sir?

Q. This contains no color?

A. No, sir; some of the lower grades would not on the first filteration come up to that color.

By the COURT: The sample No. 15 is a jar containing colorless liquid concerning which the witness is now testifying.

Q. Some of the other grades you have to filter more than once?

A. Yes; to bring it to this color. The next photograph we have deals with the machinery that is used for revivifying the bone-black that has been used for the purpose of filteration.

29 By Mr. SEMMES: Please explain what you mean by revivifying.

A. This bone-black, after being used for some length of time, more or less dependent upon the condition of the sugar that is run through it, becomes exhausted and unfit for further use; consequently it is necessary, by the application of greater or lesser quantity of hot water, to be run through these bone-black filters, to thoroughly wash this bone-black, and after this is done the bone-black is brought back to a condition fit for use again while the reburning of the bone-black in what are called bone-black kilns.

By Mr. SEMMES: Under great heat?

A. Yes, sir.

Q. What degree?

A. Between seven and eight hundred.

Q. Fahrenheit?

A. Yes, sir.

By the COURT:

Q. What is that No. 29?

A. Photograph No. 29 is bone-black filters—bone-black kilns, and in these kilns are the separate retorts in which the bone-black is burned and used again. In the course of time this bone-black is thoroughly unfit for work, because the pores of the bag become choked and it has to be replaced by additions of new black from time to time.

By the COURT: What is bone-black—animal bones reduced
30 to a black powder by being burned or charred?
A. Yes, sir; decidedly.

By Mr. SEMMES:

Q. Made of bone?

A. Yes, sir; made of animal bones. I have omitted one important photograph in connection with the bag filters that I wish to show. That is protograph No. 27, showing the scum press, in which the impurities that are collecting in the bag filters are collected in this scum press and burned out of the house, and the object of the scum press is to recover whatever existing liquid may be in those impurities. Of course, taking the bag out of the bag filters mixes with sand. A certain amount of liquid is in there, and we desire to recover that liquid, leaving the raw cake.

By the COURT:

Q. How do you get all that stuff out of the bags?

A. By washing the bags in a tub and pumping the residue of this stuff out, and it leaves the dry scum.

By Mr. SEMMES:

Q. Have you a sample of the scum?

A. Yes, sir; sample No. 13 is a sample of this scum and mud that is taken from the sugar in this raw state and finally thrown out as worthless, containing no more sugar, and as valueless.

Q. That comes out of the scum press?

A. Yes, sir. We exhibit this to show the amount of impurity and dirt that we recover in this way and that is taken from the sugar. I may say that frequently we take as many—depending, of course, on the amount of work we are doing—as seventy and eighty
31 barrels of this dirt and scum daily, containing four hundred pounds to the barrel.

By the COURT:

Q. What is done with that?

A. Carted away into waste. It has no value that we know of.

By Mr. SEMMES:

Q. Wouldn't it be good as manure?

A. It might be, but we pay for removing it. We got no return for it. Photograph No. 30 is the vacuum pan. It is an exhibit of the first stage of manufacture, after this liquid has left the bone-black filters. It is the vacuum pans of the refinery for the crystallization of this filtered liquid into grains.

Q. What happens to the vacuum pans?

A. This filtered liquid is made into grains. The vacuum pan has a vessel, shown here, containing a series of coils, and the steam is turned on the pans.

Q. Boiled in a vacuum?

A. Yes, sir; at a low temperature. That is one of the operations

of the refinery in which a good deal of skill is required in filling this grain with liquid from time to time, and until finally the pan is finished.

Q. What do you call it, "finishing pan"?

A. Yes, sir; we term it a strike.

Q. What might happen by want of skill?

A. The grain might be formed very irregularly, so that it would not machine and the syrup would not be extracted. A man without experience wouldn't do. The man who desires to do this work must have a great deal of experience before he could be put
32 in charge of the pan and conduct the operations of the pan.

By Mr. SEMMES:

Q. Why?

A. Because after he gets a certain amount of grains in his pan he has to add these kinds of liquid, and he must know how to do it from experience.

By the COURT:

Q. Does the grain form in the pan?

A. Yes, sir.

Q. In the pan?

A. Yes, sir; in the pan itself. I will show you. Photograph No. 30 shows the vacuum pan itself. This is a sample, No. 16, in our exhibits of the magma.

Q. That is what you term this sugar at that stage in the process of refining?

A. Yes, sir; after boiling in the vacuum pan it is in that condition when it is dropped in the vacuum pan for the next stage of manufacture.

Q. Before going into the centrifugals?

A. Yes, sir; that, as I said before, requires a great deal of skill in the handling.

Q. That is what might be called a wet refined sugar?

A. Yes, sir.

Q. The next process is to dry it?

A. Yes, sir; but the grain is already perfectly formed here in the vacuum pan. The next exhibit and the next stage of manufacture is shown by our photograph marked No. 31, showing the centrifugal machines, shafting, pulleys, beltings, etc.

33 Q. What is the function of the centrifugals?

A. The function is to remove this magma after it leaves the pan and separate the grain and moisture, leaving the dry sugar.

Q. The syrup goes in one direction and the sugar dried remains in the machine?

A. Yes, sir. Here is an exhibit of the sugar from the machine, showing the contrast between the sugar leaving the vacuum pans and the sugar after being machined in the centrifugal. Our first photograph is marked No. 32, and it is a view of our cube or block sugar machine, showing the machine by which the sugar is pressed into these cubes, as shown in sample marked No. 19. The sugar

from the centrifugal machines comes into this cube machine, and by a system of pressing is pressed into these cubes. The sugar is pressed in those by an application of hot air for a certain number of hours, and is perfectly dry, as shown by the form shown. Exhibit No. 33 is a photograph of the granulation machine, and sample marked 21 is an exhibit of sugar after being thus granulated in these granulating machines. The machine is simply a cylinder drum. This extends six feet in diameter and twenty-five feet long, and by the force of hot air being forced through at a great rapidity, through these drums, and the drum being kept in motion, the sugar is thoroughly dried of any moisture remaining in it after leaving the centrifugal machine, and becomes a finished produce with an attractive appearance, such as shown in this sample, No. 21, which is a sample of finished granulated sugar.

Q. Is it merely a drying machine?

A. This is the drying machine. We have to conduct an
34 operation for making crystals in the vacuum pans.

Q. The main function of that apparatus is to finish the drying process?

A. Yes, sir; and make the grains more sparkling—more handsome in appearance for table sugar.

Q. It is what you might call a polishing machine, is it?

A. Yes, sir; sparkles.

By Mr. SEMMES:

Q. Until it reaches this process it does not have that sparkle?

A. No, sir; you cannot get a sparkle on any other grade of sugar.

Q. How do you get the uniformity of grade?

A. We have to do that in the vacu-m pan.

Q. Any sifting off?

A. Oh, yes; there's sifting that we do. We boil out any grain. They are large sifters.

Q. The large sifters produce it?

A. Yes, sir; because it will not allow any sugar to pass through except of this size.

By the COURT:

Q. Go right on, Mr. McFetteridge.

A. The next exhibit is photograph marked 34, showing our powder mills for making a special grade of sugar, known to the trade as powdered sugar, which is considered the finest grade for crystallizing usages by confectioners for crystallizing fruits, etc. This is a sample of the pulverizing press. It goes through 13 discs revolving at a great rapidity, shown in this protograph, No. 34, completely pulverizing the grain and leaving the product as shown in
35 the sample marked No. 20, powdered sugar.

By Mr. SEMMES:

Q. Is that after granulation?

A. Yes, sir; after leaving the granulators it is completed into powder and there is absolutely no moisture left in the sugar, and

both of these grades of sugars, granulated and powdered, undergo all these operations up as I described it. I have forgotten again to show one sample taken without a photograph. It is sample No. 18, which exhibits a sample of the syrup coming from the centrifugal machines. While drying the sugar in these machines this fluid is drawn from perfections or sieves in the machines and runs into tanks, where it is again pumped to the pans and taken in for boiling again through a number of skillful stages.

By Mr. SEMMES:

Q. That No. 18 is the moist sugar that comes from the centrifugal?

A. It has water and syrup between the grains of sugar as it comes through the vacuum pans and is thrown out as it goes through the sieves of the centrifugal. Sample No. 22 is a grade of sugar manufactured by us, known as confectioner's "A," in which the operation of granulating is omitted, and the grain is formed in the vacuum pans to the size desired by the trade after the operation of machining in the centrifugal is, of course, conducted, but after leaving that it is packed in barrels for shipment, and afterwards retains some little moisture.

By Mr. SEMMES:

Q. How do the confectioners use that sugar?

A. They use it in their confections. I am not familiar
36 with that.

Q. For what reason is that sugar manufactured?

A. It is to satisfy the trade. Eventually they get better results out of this sugar.

Q. I merely wanted to know why the confectioners particularly wanted that kind of sugar. What is the reason?

A. I don't know that; I can't tell you exactly; I don't know that confectioners entirely use that sugar. I wouldn't make any such statement as that. I know that it is called "confectioners' A." I know a larger grain of granulated sugar they buy for retail. The last exhibit we show as a product of our manufacture is marked No. 23, which is the molasses. That is one product of the sugar refinery and the final product that we make. I will show photograph No. 35, which is simply a feature of the refinery—steam boilers—by which we intend to illustrate the large amount of steam that we use in our business. It shows a selection of the steam boilers of the plant, showing grates and apparatus for feeding the fire; it is a view of our boiler-room. No. 36 is a photograph showing the engines, the engines for driving the beltings and pumps through the house, and also engines for the electric-light machinery; 36 "A" is also an exhibit of the engines of the refinery and a continuation of No. 36, and No. 37 is a photograph of the apparatus called the lily evaporator, its object being to bring to a greater degree of density the liquid resulting in sweet water and such as comes from the washing of the tubs and bone-black apparatus, by which the liquid is drawn

from the tubes and through which steam is passed and thickened up to the required density.

37 Q. This is the residue after refining?

A. Yes, sir; molasses, which is also a product of a refinery. I think I have exhibited all the manufactured samples in detail and the raw material from which we manufacture, which are all here as exhibits.

By the COURT:

Q. During what process in the stage of refining do you get this molasses?

A. This molasses that we produce?

Q. Yes.

A. No 23 is a sample. Here it is. We get it at the full final stage of the process. It is simply a substance containing sugar, but mixed with it are impurities that have been taken out at other stages of refining to such an extent as would prevent this from being turned out as granulated sugar.

Q. Where does that come from—the final stage?

A. In the process of crystallization. Finally—throwing off syrups from time to time—we finally get to the stage where we cannot boil it into grain, as it would not be profitable for the refinery to attempt to extract the sugar in this molasses; it would not justify us to go to the expense of obtaining the sugar remaining in it from it. I think I have described the process.

By the COURT:

Q. I think so, sir.

Cross-examination by Mr. MCCALEB:

Q. What is meant by the granulation of syrups?

A. What is meant by the granulation of syrups?

38 Q. Yes, sir.

A. I don't know of any such term, sir.

Q. The reason why is that the law specially exempts planters of granulated syrups. I want to understand that expression. Do you buy syrup and granulate it?

A. No, sir.

Q. You have no granulated syrup, properly speaking?

A. I would say no; not as a syrup.

Q. Now, Mr. McFetteridge, is that a good sample of Louisiana clarified sugar No. 1?

A. I believe so, as far as my knowledge of the sugar goes.

Q. Are there any finer or whiter clarified sugars than these?

A. I can't say; I haven't see- any that appear to be any better than that. As far as I see, this is very good sugar.

Q. From what product is this Louisiana clarified sugar made?

A. From cane juice.

Q. Is it made from cane juice?

A. Yes, sir.

Q. And No. 2 Louisiana clarified firsts, is that made from cane juice?

A. Yes, sir; that is also made from cane juice.

Q. The same evidence would apply to Nos. 3 and 4, Louisiana seconds and grocers' grade?

A. It would apply to all the sugar that is entering into it originally as cane juice. Lower grades is simply made from the workings of higher grades.

Q. Are these various sugars, Louisiana clarified No. 1, 2, 3, and 4, Louisiana open kettle No. 6 and 7, and also No. 11, marked here raw beet sugars, that are made, except the beet sugar, from

39 cane?

A. Yes, sir.

Q. Now, are they sold here at the sugar exchange?

A. I believe they are.

Q. Who generally buy these sugars—what class of people—at the sugar exchange?

A. I am totally unfamiliar with that stage of the business. My business is with the refinery.

Q. What do you call open-kettle centrifugal sugar?

A. It is a grade of sugar that is boiled as an open-kettle sugar, I presume, but instead of drying out the molasses it is run through centrifugal machines and dried in that way.

Q. Do you make that kind of sugar?

A. Oh, no.

Q. Do you make centrifugal sugar?

A. No, sir; we make nothing except the exhibits shown—except the refined products.

Q. Do you buy molasses and refine it?

A. Occasionally we might do so. I haven't done so recently.

Q. Who makes Louisiana clarified and these various sugars that have these impurities that you speak of?

A. Who make them?

Q. Yes; who make them?

A. Planters.

Q. Do you know the amount of the gross purchases of open-kettle and Louisiana clar-fied sugars during each of the years sued for?

A. No, sir; I have no knowledge of it whatever.

Q. You don't know?

40 A. No, sir.

Q. You know nothing of the gross receipts?

A. Nothing of the financial aspects of the case.

Q. Are these sugars, such as Louisiana clarified, are they used generally as an article of consumption?

A. I should say not.

Q. Don't you know, as a matter of fact, that this Louisiana clarified is used on breakfast and dinner tables?

A. I have never met it in my experience.

Q. You never met it?

A. No, sir.

Q. In fact, you testify that the only sugars used or consumed are

the sugars known as "Q" or block sugar, powdered sugar, granulated sugar, confectioners' "A," and this molasses?

A. I don't know that I made any such statement.

Q. Give me the names of some sugars, outside of these, which are used and which are articles of consumption?

A. I think the classes I spoke of there as our products, I think are the very largest in consumption, and, as far as my experience goes, it is the only class that has been presented to me while here in New Orleans as an article of consumption.

Q. I am not speaking of New Orleans.

A. A person can use any kind, but I can't speak with any knowledge of the subject as to what extent other grades are used.

Q. Are centrifugal sugars used to any extent?

A. I don't know any in consumption; I don't know. We use them to a very large extent in refining.

41 D. D. COLCOCK, Esq., a witness on the part of the defendant, who, being first duly sworn, did testify as follows:

Direct examination by Mr. MCCALEB:

Q. You are secretary of the sugar exchange?

A. I am.

Q. Can you state to what purpose Louisiana clarified sugars are applied?

A. For direct consumption or refining, as the case may be.

Q. Look at this sample of Louisiana clarified sugar marked No. 1.

A. Yes, sir.

Q. As a matter of general knowledge, is it consumed on the table?

A. I have ate it myself; not this year, but I have.

Q. Now, is raw beet sugar used on tables?

A. I have no personal experience of that matter.

Q. Who purchases all these grades of sugar known as Louisiana clarified, Louisiana refining first, Louisiana seconds or grocers' grade, and Louisiana open-kettle high No. 6, Louisiana open-kettle low No. 7? Do you know who generally purchase these kinds of sugars?

A. They go to the trade generally. The trade takes what it can get and the refinery what it can get.

Q. What do you mean by the trade?

A. I mean for curing meat or tobacco.

Q. Do wholesale grocers purchase Louisiana clarified and Louisiana refining first?

A. They do.

Q. They do?

A. Yes.

42 Q. To what extent?

A. I am not able to say.

Q. What grocers purchase open-kettle centrifugal sugars?

A. Well, there's very little of that grade made.

Cross-examination by Mr. SEMMES:

Q. Molasses is also used in the trade to sell, isn't it?
A. Yes, sir.
Q. Isn't the juice of the sugar cane used sometimes for sweetening?
A. I never heard of it.
Q. Cane syrup?
A. Yes, sir; cane syrup is used; yes, sir.
Q. So that every sort of sweetening is sold in the market?
A. Yes, sir; that is correct.

By Mr. MCCALEB:

Q. What is cane syrup?
A. Cane syrup is the juice of the cane clarified and boiled to about 42, I think.
Q. What juice?
A. Cane juice.

By Mr. SEMMES:

Q. This is a sample of it? (Witness shown sample No. 9.)
A. It looks like it.

GEORGE S. EASTWICK, Esq., recalled, testifies as follows:

By Mr. MCCALEB:

Q. Mr. Eastwick, what were the gross purchases of malada—
43 gross receipts derived from refined malada, or the effect of the product of all malada in your refinery? Can you get me those receipts?
A. This goes over a series of years. It is impossible for me. I don't know how much of those we have worked during any one year. This question is impossible for me to answer. I know they have entered into the uses of the refinery every year.
Q. Well, what were the gross purchases of Louisiana clarified refined first, grocers' grade first, and refined second? What were your gross receipts of purchases of those kinds of sugars; can you state?
A. No, sir; I haven't that data at hand. It exceeds the amount you state.
Q. Therefore, if you exclude melado——

By the COURT:

Q. What is melado?
A. It is the cane specially boiled to 42, and if it is boiled still further and more of the water evaporated it becomes No. 8, like this. It represents the crystal of sugar and molasses and everything together.

By Mr. MCCALEB:

Q. But the value of the product of your purchases of Louisiana refining first and second grocers' grades would exceed the sum stated in the rule?

A. Well, not—that question I cannot answer so definitely. I merely looked into the question generally of the business. During those years we have done a very large amount of refining of beet and Cuba sugar and I looked at it in the whole, and I state
44 our business of refining constitute- more than the amount stated in your rule.

By Mr. SEMMES:

Q. All classes?
A. Yes, sir; all classes.

By Mr. MCCALEB:

Q. If you exclude melado, or sugars that you received from abroad, what would the gross receipts be? Would they exceed the amounts stated in the rule?
A. That I don't know. I would have to examine the books. I have not looked into that question.
Q. I merely would like to have the approximate amount if you can give it.
A. I would be glad to give you the approximate amount, but I must look over it. This extends over a period of from five to six years and I will be very happy to do so, sir.
Q. Will you furnish it?
A. Oh, yes; I will do so.

By Mr. SEMMES:

Q. The gentleman desires to know if the clarified sugars that he named, the produce of the sales of that, would amount to $2,500,000, as stated in the rule; that is all you will have to state.
A. He wants to know whether the amount of Louisiana sugars, including all the grades of Louisiana sugars?

By Mr. MCCALEB:

Q. No; the next four grades.

By Mr. SEMMES:

Q. You want to know whether 2, 3, 4, 6, and 7?
A. Well, I will take a memorandum of that.
45 Q. Whether the annual sales of Nos. 1, 2, 3, 4, 6, and 7 amount to $2,500,000 per annum?
A. All right, I will look into that matter.
Q. If it is over the amount, you don't need to state it; if it is under, you will state it.
A. The amount is what?
Q. $2,500,000.
A. Is that collectively for the year or each year?
Q. Each year, from 1892, inclusive, to 1896, inclusive.

By Mr. MCCALEB:

Q. Now, Mr. Eastwick, will you also approximate the receipts of sales of loaf sugar—this block sugar?

A. I cannot give that data. It would have to come from the auditor of the company.

Q. Just get that for me.

A. Do you want to know the approximate amount of cube or lump sugar?

Q. The gross product of sales—gross receipts.

A. All right.

Q. And whether these sales would change the result when your receipts are more than $2,500,000; in other words, I would have to separate from the receipts of the fine sugars the receipts of this cube sugar; if it would not affect the result of $2,500,000 you need not give it.

By Mr. SEMMES:

Q. You want to know whether or not they have sold in each year $2,500,000 of block sugar—No. 19?

By Mr. MCCALEB:

Q. No, sir; I want him to substract from his gross receipts
46 of the refined sugars the receipts of the cube or block sugar.

By Mr. SEMMES:

Q. You want to substract the value of the block sugar from the sale of all the other sugars?

By Mr. MCCALEB:

Q. Yes; I state if it is over $2,500,000; and, if it is, you simply want a statement to that effect.

By Mr. SEMMES:

Q. After making this reduction if the residue is over $2,500,000 just state that fact.

Continued until the thirty-first for argument.

(Endorsed:) No. 54925. Civil district court. State of Louisiana *vs.* American Sugar Refining Company. Notes of evidence. Testimony for defendant. Produced, stamped, and filed May 23rd, 1898. Joe Garridel, d'y clerk.

Continued.

Extract from the Minutes of Division C.

MONDAY, *January* 10, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

By consent of counsel, the rule in this case fixed for this day was continued to Monday next, at eleven o'clock a. m.

47 *Continued.*

Extract from the Minutes of Division C.

MONDAY, *January* 17, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

The rule for State license came up for hearing on this day—present, Edwin H. McCaleb, Jr., Esq., for plaintiff; Thos. J. Semmes, Esq., for defendant—and after hearing pleadings and the evidence the case was continued to Monday, January 31st, 1898, for argument of counsel.

Continued.

Extract from the Minutes of Division C.

MONDAY, *January* 31, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

For cause and by consent of counsel, the rule in this case fixed for this day was continued to Monday next, at eleven o'clock a. m.

Continued.

Extract from the Minutes of Division C.

MONDAY, *February* 7, 1898.

Present: Honorable F. A. Monroe, judge.

48 Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

For cause, the rule in this case fixed for this day was ordered continued to Monday next, at eleven o'clock a. m.

Continued.

Extract from the Minutes of Division C.

MONDAY, *February* 14, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

For cause, the rule in this case fixed for trial on this day was continued to Monday next, at eleven o'clock a. m.

Continued.

Extract from the Minutes of Division C.

MONDAY, *February* 21, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

For cause and by consent of counsel, the rule in this case fixed for trial on this day was ordered continued to Monday, February 28th, 1898, at eleven o'clock a. m.

Continued.

Extract from the Minutes of Division C.

49 MONDAY, *February* 28, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

For cause, the rule in this case was continued to Monday next, at eleven o'clock a. m.

Continued.

Extract from the Minutes of Division C.

MONDAY, *March* 7, 1898.

Present: Honorable Geo. H. Theard, judge, division E, acting in place of Honorable F. A. Monroe, judge, division C, now absent.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

Owing to the absence of his honor the judge of this division of the court, the rule fixed for hearing on this day was ordered continued to Monday next, at eleven o'clock a. m.

Continued.

Extract from the Minutes of Division C.

MONDAY, *March* 14, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

The rule in this case fixed for hearing on this day was
50 ordered continued to Monday, March 28th, 1898, at eleven o'clock a. m.

Continued.

Extract from the Minutes of Division C.

MONDAY, *May* 16, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

The rule in this case fixed for hearing on this day was, on proper showing, ordered to be continued to Monday, May 23rd, 1898, at eleven o'clock a. m., to be placed on the docket with the rank now held thereon.

Submission.

Extract from the Minutes of Division C.

MONDAY, *May* 23, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING Co. } No. 54925.

After hearing Thos. J. Semmes, Esq., att'y for defendant, this case was submitted for adjudication, three days being allowed to plaintiff to file his brief.

Judgment.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING Co. } No. 54925.

51 In this matter, submitted for adjudication for the reasons orally assigned on this day, the court, being of opinion that the business carried on by the defendant company is that of a manufacturer—

It is ordered, adjudged, and decreed that the rule of the plaintiff be discharged with costs.

Judgment rendered May 30th, 1898.

Judgment signed June 3rd, 1898.

(Signed) F. A. MONROE, *Judge.*

Judgment Signed.

Extract from the Minutes of Division C.

FRIDAY, *June* 3, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING Co. } No. 54925.

The judgment in this case, rendered on the 27th of May, 1898, was signed on this day.

Motion for Appeal.

Filed June 6, 1898, and entered on the minutes of same date.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

52 On motion of E. H. McCaleb, Jr., of counsel for plaintiff, and on suggesting that there is error to plaintiff's prejudice in the final judgment herein, rendered on May 30th, 1898, and signed on June 3rd, 1898, that the State of Louisiana is aggrieved thereby and desires to suspensively appeal therefrom:

It is ordered that a suspensive appeal be granted to the State of Louisiana from the final judgment herein, rendered on the 30th day of May, 1898, and signed on the 3rd day of June, 1898, returnable to the honorable supreme court of Louisiana on the 3rd Monday of June, 1898, without bond, the State of Louisiana being exempted from giving bond.

Certificate.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, Jas. C. Peyton, d'y clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing fifty-one (51) pages do contain a true, correct, and complete transcript of all the proceedings had, documents filed, and evidence adduced upon the trial of the cause wherein State of Louisiana is plaintiff and American Sugar Refining Co. is defendant, instituted in this court and now in the records thereof under the No. 54925 of the docket of this honorable court, division "C," Honorable F. A. Monroe, judge.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said court, at the city of New Orleans, on this seventeenth day of June, in the year of our Lord
53 one thousand eight hundred and ninety-eight, and in the one hundred and twenty-second year of the Independence of the United States of America.

JAS. C. PEYTON, *D'y Clerk.*

54 UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

Proceedings Had in the Supreme Court of the State of Louisiana.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

On appeal from the civil district court for the parish of Orleans, division "C."

Transcript of Appeal.

(Filed June 20th, 1898.) (Signed) Paul E. Mortimer, deputy clerk.

Cause Argued and Submitted.

(Extract from Minutes.)

NEW ORLEANS, TUESDAY, *December 6th*, 1898.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

This cause came on this day to be heard and was argued by counsel; Mr. E. Howard McCaleb, Jr., opened for the plaintiff and appellant; Mr. Thomas J. Semmes replied on behalf of the defendant and appellee, and Mr. McCaleb closed the argument. The court then took the cause under advisement upon the briefs now on file for both parties.

55 *Opinion of the Court.*

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *December 19th*, 1898.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

Absent: Francis T. Nicholls, chief justice.

His honor Mr. Justice Watkins pronounced the opinion and judgment of the court in the following case:

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

Appeal from the civil district court for the parish of Orleans.

This is a proceeding by rule on the part of the State tax collector of the second district of the city of New Orleans against the defendant for the sum of twenty-one thousand dollars as the aggregate amount of licenses due the State for the years 1892, 1893, 1894, 1895, 1896, and 1897, upon which interest and attorneys' fees are to be computed according to law.

It is alleged that the defendant is conducting the business of refining sugar and molasses, and has been conducting said business during the various years aforesaid, without having obtained any license therefor from the State, and that the annual gross receipts of said defendant company *is* in excess of two million five hundred thousand dollars.

It is further alleged that all persons who conduct any business without obtaining a license from the State before the first day of March are declared delinquents and become liable to interest and penalties, and that the defendant, having been a delinquent in each of the aforesaid years, is liable for said licenses, interest, and attorneys' fees.

56 To the rule taken the respondent excepted that the tax collector had no authority to thus proceed, it never having been placed on the list of delinquent license-payers which the law requires him to furnish.

Reserving the benefit of said exception, it makes the following answer, viz:

That the business of refining sugar and molasses is exempt from the payment of a license tax for the years specified, because its said business is and always has been that of refining sugar and molasses, and none other, and as such "it is and always has been one of those manufactories enumerated in article 207 of the constitution as entitled to exemption from license taxes," etc.

Its further answer is that act 150 of 1890, on the authority of which the license sought to be collected is demanded, violates the Constitution of the United States and is void in so far as it attempts to impose a license tax upon defendant company, because the said act denies to it the equal protection of the laws of the State, inasmuch as said act does not impose equally a license tax on all persons engaged in the business of refining sugar and molasses, but, on the contrary, discriminates in favor of the planters who refine their own sugar and molasses and in favor of planters who granulate syrups for other planters during the rolling season.

That for the foregoing reasons said act conflicts with and is violative of the provisions of the fourteenth amendment of the Constitution of the United States, which prohibits any State from depriving a person of his property without due process of law, and from denying any person within its jurisdiction *of* the equal protection of the laws.

On the trial of the exception same was overruled, and on the trial

of the rule same was discharged, and from that judgment plaintiff in rule prosecutes this appeal.

I.

The exception suggests that it is a condition precedent to proceeding by rule to collect delinquent licenses, as contemplated by act 150 of 1890, that the tax collector shall first enter the names of all delinquents upon the tax register, and shall also include the names of such delinquents in a list to be furnished to the
57 attorney of the tax collector.

In our opinion, that supposition is not supported by the terms of the statute cited.

Instead of the entry upon a license register being a condition precedent to a proceeding by rule, it clearly appears from section twenty of the act that the tax collector is required to keep a license register of every person, with the trade, profession, etc., pursued, the class and graduation of the same, the amount of the license applied for.

Instead of that provision having any relation to *delinquent* licenses it plainly specified the purpose of the legislature to have been to require tax collectors to prepare and keep a book in which they shall record the statements of all persons "*who may apply* for licenses to pursue any trade, profession, vocation, or selling, etc." Certainly it can have no application to those persons who, like defendant, made no application at all. Section twenty-two of the act has exclusive reference to collected and not delinquent licenses.

The exception was properly overruled.

II.

We will take the last proposition of the defendant first. The contention of counsel is that act 150 of 1890 exempts planters who refine their own sugar from the payment of a license and imposes a license upon persons who, like defendant, are exclusively engaged in refining sugars, thus depriving them of the equal protection of the laws, in violation of the fourteenth amendment of the Constitution of the United States.

On the other hand, the contention of the tax collector's attorney is that the sugar planter, who produces as well as refines his own sugar, belongs to a wholly different class from that to which the *refiner*, who *purchases manufactured sugar*, and thereafter refines it and sells it upon the market after same has been refined.

That the planter is the real manufacturer of sugar, and the refining process carried on by him is merely one of cleansing and purifying it and better fitting same for market, and only incidentally connected with his occupation of manufacturer; whilst, on the other hand, the business of the defendant is exclusively that of refining sugar—an independent business.

58 Consequently there can be no discrimination imputed to the statute in favor of one and against another of the *same* class.

That the act clearly specifies two distinct and different classes,

one of whom purchases, refines, and sells sugar, and the other of whom manufactures and refines his own product, the two classes of persons being dissimilarly situated.

The exemption clause of the statute is couched in the following terms, viz:

"*Provided* nothing herein shall be construed to apply to the business of grinding meal, ginning cotton, or making sugar by any farmer or planter."

Proviso to paragraph 1 of act 150 of 1890, under the heading of "manufacturers," same being the general license law.

The objection to the foregoing provision of the statute appears to be that it is special in its character, and such legislation was held by the Supreme Court not to come within the provisions of the fourteenth amendment.

They say: "The objection that the law of 1874 deprives the railroad companies of the equal protection of the laws is even less tenable than the one considered. It seems to rest upon the theory that legislation which is special in character is necessarily within the constitutional inhibition; but nothing can be further from the fact. The greater part of all legislation is special, either in the objects sought to be attained by it or in the extent of its application."

After analysing the statute, the court made the observation, viz:

"Such legislation is not obnoxious to the last clause of the fourteenth amendment *if all persons subject to it are treated alike under similar circumstances and conditions in respect to both of the privileges conferred and the liabilities imposed.*"

Missouri Railway Co. *vs.* Mackey, 127 U. S., 305.

The same rule of interpretation was announced in Santa Clara County *vs.* Railroad Company, 118 U. S., 394; Milling Company *vs.* Pennsylvania, 125 U. S., 187; Wurtes *vs.* Holland, 114 U. S., 606; Railroad Company *vs.* Richmond, 96 U. S., 321.

The statute in question exempts alike all planters and farmers who are engaged in "making sugar," and makes no mention
59 of those persons who are engaged in the business of refining sugar and molasses.

A very clear case is thus stated by the Supreme Court in Pacific Express Company *vs.* Seebert, 142 U. S., 339, in which Mr. Justice Lamar, speaking for the court, said:

"The legislation in question cannot be considered as invidiously discriminating against the express companies defined by it in favor of other companies or persons that may carry express matter on certain other conditions or under different circumstances. There is an essential difference between express companies defined by this act and railroad and steamboat companies or other companies that own their own means of transportation.

"The vital question is this: Railroad companies pay taxes on their road-beds, rolling stock, and other tangible property, etc.
* * *

"This distinction clearly places express companies defined by this act *in a separate class from companies owning their own means of*

transportation. They do not do business under the same conditions or under similar circumstances. In the nature of things and irrespective of the definitive legislation in question, they belong to different classes. There can be no objection, therefore, to the discrimination made as between express companies defined by this act and other companies or *persons incidentally doing a similar business by different means and methods* in the manner in which they are taxed."

In our conception, that decision is exactly applicable to this case and puts the constitutionality of the act in question beyond doubt.

We think the judge *a quo* correctly overruled the defendant's exception and maintained the constitutionality of the statute.

II-.

Is the defendant a manufacturer in the sense and within the meaning of article 207 of the constitution of 1879 and entitled to exemption?

The language of that article is, "that there shall also be exempt from taxation and license * * * the capital and machinery and other property employed in the manufacture of textile fabrics, leather, shoes, harness, saddlery, hats, flour, machinery, agricultural implements, and furniture and other articles of wood, marble, or stone, soap, stationary, ink and paper, boat-building and chocolate: *Provided*, not less than five hands are employed in any one factory."

By a constitutional amendment that article was so altered as to add thereto the following, viz., "the manufacture of ice, fertilizers, and chemicals." Act 22 of 1886.

In Shreveport Gas, Electric Light and Power Company *vs.* Assessor, 47th Ann., 65, we had this constitutional amendment under consideration, and in the course of our opinion we said:

"The words and terms of a constitutional article, like those of a law, are to be understood in their most usual signification, and in order to ascertain the true meaning of a statute the reason and spirit of it should be considered, and also the cause which superinduced its enactment.

"This is the accepted canon of construction of statutes, and equally so of the Constitution."

Accepting this as the proper view to be taken of the constitutional article and its amendment, the claim of the defendant to exemption from the payment of the licenses demanded is wholly groundless, for the very plain reason that the manufacturer of sugar and molasses—if indeed it be such—is not mentioned in either; and as it is the universal rule that questions of tax exemption must be strictly construed, judgment must go against the claim of the defendant.

There is, however, a doubt in our minds as to whether the law authorizes the State to recover on rule licenses for any year anterior to 1897.

We will therefore give judgment for the sum of thirty-five hundred dollars, with 2 % per month interest from the 1st of March,

1897, and 10 % attorneys' fees on said amount and interest, and enter a nonsuit as to the remainder of the plaintiff's claim.

It is therefore ordered and decreed that the judgment discharging the plaintiff's rule be avoided and reversed; and it is further ordered and decreed that the plaintiff do have and recover from the defendant the sum of thirty-five hundred dollars, with two *per cent.* interest per month thereon from the 1st day of March, 1897, ten *per cent.* attorneys' fees on said amount, and interest.

It is further ordered that a nonsuit be entered on the balance of the claim, and that all costs of both courts be taxed against the defendant and appellee.

61 *Final Judgment.*

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *December 19th*, 1898.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

Absent: Francis T. Nicholls, chief justice.

His honor the presiding justice pronounced the opinion and judgment of the court in the following case:

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

On appeal from the civil district court for the parish of Orleans.

It is ordered and decreed that the judgment discharging the plaintiff's rule be avoided and reversed; and it is further ordered and decreed that the plaintiffs do have and recover from the defendant the sum of thirty-five hundred dollars, with two per cent. interest thereon from the first day of March, 1897, ten per cent. attorneys' fees on said amount, and interest.

It is further ordered that a nonsuit be entered on the balance of the claim, and that all costs of both courts be taxed against the defendant and appellee.

Petition for Rehearing.

(Filed December 27th, 1898.)

THE STATE OF LOUISIANA
versus
THE AMERICAN SUGAR REFINING COMPANY. } No. 12877.

Petition for rehearing on behalf of The American Sugar Refining Company, appellee.

To the honorable the supreme court of Louisiana:

The petition of the defendant company, appellee, respectfully prays that a rehearing in this case be granted for the following reasons:

62 First. The court has inadvertently fallen into error as to the provisions in the constitution of 1879 under which the defendant claims exemption from the payment of license taxes.

The claim for exemption is not based on art. 207 of the constitution of 1879; it is founded on the provisions of art. 206, through clerical error designated as art. 306 in the answer, for the articles of the constitution of 1879 do not exceed 268 in number. The answer describes the provision which was relied on for the exemption claimed. It says the defendant is exempted from the payment of license tax because its said business is and always has been that of refining sugar and molasses and none other, and as such it is and always has been one of those manufacturers enumerated in art. 306 of the constitution as entitled to exemption from license taxes, and, furthermore, its business is and always has been conducted by means of mechanical appliances and apparatus, and it is further exempted by the said art. 306 from payment of license taxes as a person engaged in a mechanical pursuit.

Article 206 is the only article that exempts from license persons engaged in mechanical pursuits, so that it is clear art. 206 was the article relied on in the answer and intended to be pleaded. This article imposes a license tax on all persons and corporations "pursuing any trade, profession, business, or calling, except clerks, laborers, clergymen, school teachers, those engaged in mechanical, agricultural, horticultural, and mining pursuits, and *manufacturers* other than those of distilled alcoholic or malt liquors, tobacco and cigars, and cotton-seed oil. No political corporation shall impose a greater license tax than is imposed by the General Assembly for State purposes."

Under the provisions of this article any manufacturer is exempted from license tax unless he be a manufacturer of liquor, tobacco, cigars, and cotton-seed oil.

Hence the answer claimed the exemption granted to all manufacturers not included in the exceptions just mentioned.

On the other hand, art. 207 imposes taxes on all property, but declares that there shall be exempted from *taxation and license* for the period of ten years "the capital, machinery, and other
63 property employed in the manufacture of textile fabrics, leather, shoes, harness, saddlery, hats, flour, machinery, agricultural implements, and furniture, and other articles of wood, marble, or stone, soap, stationary, ink, and paper, boat-building, and chocolate, provided that not less than five hands are employed in one factory." It is true, as the court has decided, that the defendant is not entitled, under art. 207, to any exemption from *license or taxes*, because its business is not enumerated in the class of manufacturers exempted in that article.

But if the defendant corporation be a *manufacturer* of any description, it is entitled to the exemption from the license tax imposed by art. 206, whatever be the number of hands employed, unless it be engaged in the manufacture of liquor, cigars, tobacco, or cotton-seed oil, the manufactures of which are expressly excepted from the exemption conferred by that article.

Second. During the course of the argument one of the justices asked the counsel for the defendant whether he claimed exemption from taxes, and he replied, No; that the company always paid taxes on its property; and the two articles, 206 and 207, were read by counsel to the court to show the difference between the exemptions of art. 206 and those of art. 207. The court below decided the case in favor of the defendant on the exemption claimed by it as a manufacturer under article 206.

The whole oral argument in this court as to facts was confined to the testimony adduced to prove that the process of refining sugar was a process of manufacture. The counsel for the State, in his brief, as well as in the oral argument, addressed himself solely to the question whether or not the process of refining was a process of manufacture, and all the decisions of this court quoted in the briefs were confined to that question. No one suggested that the business of the defendant company belonged to the class of factories exempted by art. 207 from license and taxes.

It was also conceded on both sides that if a sugar refiner was a manufacturer the defendant was entitled to the exemption claimed under the constitution. This concession, of course, had reference to art. 206.

Third. Under these circumstances we submit that the most satisfactory course to pursue is that the court grant a rehearing and set the cause again for argument, as if it had never been considered, and that an oral argument be allowed on the rehearing. An oral argument is preferable because the case is reduced to one of fact—that is to say, whether the defendant company is a manufacturer of sugar or not, so that the oral argument can be confined by the court to the question of fact and thus save consumption of time.

64

This case is important when the amount involved is considered, because if decided against the defendant it will be compelled to pay the city license for the years claimed by the State in this suit, with penalties and the excessive interest of two per cent. per month, and, in addition thereto, the defendant becomes liable to pay the licenses, both State and city, for the year 1898, with similar penalties, to say nothing of the claim of the State to institute a new suit for the licenses of the years disallowed in this proceeding because of the form of action, including the penalties for a delinquency, which was unintentional, because the defendant supposed it was exempt.

THOMAS J. SEMMES,
Counsel for Petitioner, The American Sugar Refining Co.

(Signed) THOS. J. SEMMES, *Of Counsel.*

Rehearing Granted.

(Extract from the Minutes.)

NEW ORLEANS, MONDAY, *January 9th*, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

Absent: Francis T. Nicholls, chief justice.

BY THE COURT.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

It is ordered that the rehearing applied for in this case be granted.

Motion for Oral Argument on Rehearing.

Supreme Court of Louisiana.

THE STATE OF LOUISIANA
vs.
THE AMERICAN SUGAR REFINING COMPANY. } No. 12877.

Now comes the appellee, The American Sugar Refining Company, by its undersigned counsel, and moves the court that it be allowed an oral argument on the rehearing granted in this cause.

(Signed) THOS. J. SEMMES,
For Appellee.

(O K.
E. H. McC.)

(Endorsed:) Sup. court of La. No. 12877. State of La. *vs.* Amer. Sugar Ref. Co. Motion for oral argument on rehearing. (Signed) Thos. J. Semmes for appellee. Presented in open court Jan'y 24, 1899.

65 *Cause Submitted.*

(Extract from the Minutes.)

NEW ORLEANS, FRIDAY, *February 10th*, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

(On rehearing.)

This cause came on this day to be heard; whereupon the same was submitted to the court by counsel for both parties upon the briefs and papers now on file.

Opinion of the Court.

(On rehearing.)

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, TUESDAY, *March 7th*, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

Absent: Francis T. Nicholls, chief justice.

His honor Mr. Justice Watkins pronounced the opinion and judgment of the court in the following case:

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

"On rehearing."

Appeal from the civil district court for the parish of Orleans.

This is a proceeding by rule on the part of the State tax collector of the second district of the city of New Orleans against the
66 defendant for the sum of twenty-one thousand dollars as the aggregate amount of licenses due the State for the years 1892, 1893, 1894, 1895, 1896, and 1897, upon which interest and attorneys' fees are to be computed according to law.

It is alleged that the defendant is conducting the business of refining sugar and molasses, and has been conducting said business during the various years aforesaid, without having obtained any license therefor from the State, and that the annual gross receipts of said defendant company is in excess of two million five hundred thousand dollars.

It is further alleged that all persons who conduct any business without obtaining a license from the State before the first day of March are declared delinquents, and become liable to interest and penalties, and that the defendant, having been a delinquent in each of the aforesaid years, is liable for said licenses, interest, and attorneys' fees.

To the rule taken the respondent excepted that the tax collector had no authority to thus proceed, it never having been placed on the list of delinquent license-payers which the law requires him to furnish.

Reserving the benefit of said exception, it makes the following answer, viz:

That the business of refining sugar and molasses is exempt from the payment of a license tax for the years specified, because its said business is and always has been that of *refining* sugar and molasses

and none other, and as such "it is and always has been one of those *manufacturers* enumerated in article 206 of the constitution as entitled to exemption for license taxes, etc."

Its further answer is that act 150 of 1890, on the authority of which the license sought to be collected is demanded, violates the Constitution of the United States, and is void in so far as it attempts to impose a license tax upon defendant company, because the said act denies to it the equal protection of the laws of the State, inasmuch as said act does not impose a license tax equally on all persons engaged in the business of refining sugar and molasses, but, on the contrary, discriminates in favor of planters who refine
67 their own sugar and molasses, and in favor of planters who granulate syrups for other planters during the rolling season.

That for the foregoing reasons said act conflicts with and is violative of the provisions of the fourteenth amendment of the Constitution of the United States, which prohibits any State from depriving a person of his property without due proced*d* of law, and from denying any person within its jurisdiction *of* the equal protection of the laws.

On the trial of the exception same was overruled, and on the trial the rule was discharged, and from that judgment plaintiff in rule prosecutes this appeal.

I.

The exception suggests that it is a condition precedent to proceeding by rule to collect delinquent licenses, as contemplated by act 150 of 1890, that the tax collector shall first enter the names of all delinquents upon the tax register, and shall also include the names of such delinquents in a list to be furnished to the attorney of the tax collector.

In our opinion, that supposition is not supported by the terms of the statute cited.

Instead of the entry upon a license register being a condition precedent to a proceeding by rule, it clearly appears from section twenty of the act that the tax collector is required to keep a license register of every person, with the trade, profession, etc., pursued, the class and graduation of the same, the amount of the license applied for.

Instead of that provision having any relation to *delinquent* licenses, it plainly specified the purpose of the legislature to have been to require tax collectors to prepare and keep a book in which they shall record the statement of all persons "*who may apply* for licenses to pursue any trade, profession, vocation, or selling, etc." Certainly it can have no application to those persons who, like defendant, made no application at all. Section twenty-two of the act has exclusive reference to collected and not delinquent licenses.

The exception was properly overruled.

II.

We will take the last proposition of the defendant first. The contention of counsel is that act 150 of 1890 exempts planters
68 who refine their own sugar from the payment of a license and imposes a license upon persons who, like defendant, are exclusively engaged in refining sugars, thus depriving them of the equal protection of the laws, in violation of the fourteenth amendment of the Constitution of the United States. On the other hand, the contention of the tax collector's attorney is that the sugar planter who produces as well as refines his own sugar belongs to a wholly different class from that to which the *refiner* who *purchaser manufactured sugar* and thereafter refines it and sells it upon the market after same has been refined.

That the planter is the real manufacturer of sugar, and the refining process carried on by him is merely one of cleansing and purifying it and better fitting same for market, and not incidentally connected with his occupation of manufacturer, whilst, on the other hand, the business of the defendant is exclusively that of refining sugar—an independent business.

Consequently there can be no discrimination imputed to the statute in favor of one and against another of the *same* class.

That the act clearly specifies two distinct and different classes, one of whom purchases, refines, and sells sugar, and the other of whom manufactures and refines his own product, the two classes of persons being dissimilarly situated.

The exemption clause of the statute is couched in the following terms, viz:

"*Provided* nothing herein shall be construed to apply to the business of grinding meal, ginning cotton, or making sugar by any farmer or planter."

Proviso to paragraph 1 of act 150 of 1890, under the heading of "manufacturers," same being the general license law.

The objection to the foregoing provision of the statute appears to be that it is special in its character, and such legislation was held by the Supreme Court not to come within the provisions of the fourteenth amendment.

They say: "The objection that the law of 1874 deprives the railroad companies of the equal protection of the laws is even less tenable than the one considered. It seems to rest upon the theory that legislation which is special in character is necessarily
69 within the constitutional inhibition; but nothing can be further from the fact. The greater part of all legislation is special, either in the objects sought to be attained by it or in the extent of its application."

After analysing the statute the court made the observation, viz:

"Such legislation is not obnoxious to the last clause of the fourteenth amendment *if all persons subject to it are treated alike under similar circumstances and conditions in respect to both of the privileges conferred and the liabilities imposed.*"

Missouri Railway Co. *vs.* Mackey, 127 U. S., 305.

The same rule of interpretation was announced in Santa Clara County *vs.* Railroad Company, 118 U. S., 394; Milling Company *vs.* Pennsylvania, 125 U. S., 187; Wurtes *vs.* Holland, 114 U. S., 606; Railroad Company *vs.* Richmond, 96 U. S., 321.

The statute in question exempts alike all planters and farmers who are engaged in "making sugar," and makes no mention of those persons who are engaged in the business of refining sugar and molasses.

A very clear case is thus stated by the Supreme Court in Pacific Express Company *vs.* Seebert, 142 U. S., 339, in which Mr. Justice Lamar, speaking for the court, said:

"The legislation in question cannot be considered as invidiously discriminating against the express companies defined by it in favor of other companies or persons that may carry express matter on certain other conditions or under different circumstances. There is an essential difference between express companies defined by this act and railroad and steamboat companies or other companies that own their own means of transportation.

"The vital question is this: Railroad companies pay taxes on their road-beds, rolling stock, and other tangible property, etc. * * *

"This distinction clearly places express companies defined by this act *in a separate class from companies owning their own means of transportation.* They do not do business under the same conditions or under similar circumstances. In the nature of things and irrespective of the definitive legislation in question, they belong to different classes. There can be no objection therefore to the discrimination made as between express companies defined by
70 this act and other companies or *persons incidentally doing a similar business by different means and methods* in the manner in which they are taxed."

In our conception, that decision is exactly applicable to this case and puts the constitutionality of the act in question beyond doubt.

We think the judge *a quo* correctly overruled the defendant's exception and maintained the constitutionality of the statute.

III.

Having in our original opinion treated the defendant's exemption from the payment of a State license as having been asserted under the provisions of article two hundred and seven of the constitution of 1879, whereas the exemption was actually alleged and claimed under the provisions of article two hundred and six thereof, we granted a rehearing of this cause.

Recognizing this error to the defendant's prejudice, we now withdraw that portion of our opinion and will examine the claim of the defendant to exemption under article two hundred and six of the constitution.

That article is couched in the following words, viz:

"All persons, associations of persons and corporations pursuing any trade, profession, business, or calling, may be rendered liable to such tax, *except* clerks, laborers, clergymen, school teachers, those

engaged in mechanical, agricultural, horticultural, and mining pursuits, and *manufacturers*, other than those of distilled alcoholic or malt liquors, tobacco and cigars, and cotton-seed oil. No political corporation shall impose a greater license tax than is imposed by the General Assembly for State purposes."

Under the provisions of this article any manufacturer is exempted from license tax unless he be a manufacturer of liquor, tobacco, cigars, and cotton-seed oil.

Hence the answer claimed the exemption granted to all manufacturers not included in the exceptions just mentioned.

For the purpose of laying a foundation for its exemption, the defendant interrogated its superintendent as a witness, and from his testimony we have made the following extracts, viz:

"Q. Mr. McFetteridge, you are the superintendent of the American Sugar Refining Company of this city, are you not?

71 "A. Yes, sir.

"Q. What has been your experience in the refining of sugar?

"A. I have had experience running over fifteen years in the North and the past year in Louisiana.

"Q. Now, will you please commence from the beginning and go through the whole process by which crude sugars are converted into refined sugar, and do so deliberately, and in making the explanation exhibit the samples to the court, and the pictures of the machinery, and explain the operation.

"A. Well, necessarily, some of the samples and the photographs, to make a thorough explanation, will have to be shown together. Now, to begin with the process in the refinery, we receive the sugar either from plantations in the State or from abroad, wherever produced, in barrels or bags, packages—in whatever way it may be packed. Our first process is to melt every bag or barrel of sugar so received in suitable vessels specially constructed for the purposes of melting sugar and bringing it to a tendency for refining.

"There are suitable storage apparatus—storage apparatus and steam water storage—and they are connected with pumps run by power, with shafting, to pump the sugar after it is dissolved by these melters, and conducting it to the upper stories of this building for another operation.

"Q. Samples from No. 1 to No. 11 contain crude sugar and liquid before you have done anything with it?

"A. Yes; as we receive it. Sample No. 12 would show this crude sugar melted before clarification and filteration.

"Q. In the melter?

"A. Yes; after it has been brought to the density we require it.

"Q. Do you put all these sugars indiscriminately through the melter?

"A. It would not be my practice to put them in all indiscriminately. It results better to follow high with low grades, although they have to go through the same process.

* * * * * * *

"Q. I see a sample, No. 5, I should imagine. What is that?

"A. That is what is called the third grade of raw sugar.

72 "Q. Is this the most inferior grade of sugar that you receive?

"A. Yes; I judge by looking at it, it is. We have some fourths even poorer in quality that these thirds. After this sugar has been melted and pumped to the upper story of one of our buildings, we conduct an operation that we call clarification. This is done in blow-ups, and I have an exhibit of these raw sugar blow-ups which is No. 25 of our exhibits.

"Q. What is a blow-up and where is it on this vessel?

"A. Here, iron tanks containing steam."

"The WITNESS: After leaving these blow-ups the liquid is strained through these bags, the purpose being to remove the mechanicable impurities—the insolulable impurities that exist in the liquid form of the sugar.

* * * * * * *

"The process following this straining through the bags is the filtering process through bone-black filters, which are iron vessels in our establishment about twenty feet in height and ten feet in diameter.

* * * * * * *

"This speaks for itself. Now, I might speak of the process and show these samples in connection with this fluid. This liquid, after it leaves the bag filters, is strained through the filters containing this burnt animal bone-black itself, and also after the liquid leaves the bone-black. I have already shown the liquid after going in the bag filters. Sample No. 14 is a sample of this burnt animal bone-black. This is used as an agent for decoloring and removing impurities.

* * * * * * *

"No. 15 is an exhibit of this raw sugar after being melted, clarified in the blow-ups, strained through the filters, and decolorized by bone-black before boiling in vacuum pan.

"By the COURT: Do you bring all the grades of sugar, from the lowest to the highest, to that condition?

"A. Sir?

"Q. Some of the other grades you have to filter more than once?

"A. Yes, to bring it to this color. The next photograph we have deals with the machinery that is used for rerevivifying the

73 bone-black that has been used for the purpose of filteration.

* * * * * * *

"Q. Please state what you mean by revivifying.

"A. This bone-black, after being used for some length of time, more or less dependent upon the condition of the sugar that is run through it, becomes exhausted and unfit for further use; consequently it is necessary, by the application of a greater or lesser quantity or hot water to be run through these bone-black filters, to thoroughly wash

this bone-black, and after this is done the bone-black is brought back to a condition fit for use again, while the reburning of the bone-black in what are called bone-black kilns.

* * * * * * *

"By Mr. SEMMES: Under great heat?

"A. Yes, sir.

"Q. What degree?

"A. Between seven and eight hundred.

"Q. Fahrenheit?

"A. Yes, sir.

"By the COURT: What is bone-black—animal bones reduced to a black powder by being burned or charred?

"A. Yes, sir; decidedly.

"By Mr. SEMMES:

"Q. Made of bone?

"A. Yes, sir; made of animal bones. I have omitted one important photograph in connection with the bag filters that I wish to show. That is photograph No. 27, showing the scum press, in which the impurities that are collecting in the bag filters are collected in this scum press and burned out of the house, and the object of the scum press is to recover whatever existing liquid may be in those impurities. Of course, taking the bag out of the bag filters mixes with sand. A certain amount of liquid is in there, and we desire to recover the liquid, leaving the raw cake.

"By the COURT:

"Q. How do you get all of that stuff out of the bags?

"A. By washing the bag in a tub and pumping the residue
74 of this stuff out, and it leaves the dry scum.

"By Mr. SEMMES:

"Q. Have you a sample of the scum?

"A. Yes, sir. Sample No. 13 is a sample of this scum and mud that is taken from the sugar in this raw state and finally thrown out as worthless—containing no more sugar—and as valueless.

"Q. That comes out of the scum press?

"A. Yes, sir. We exhibit this to show the amount of impurity and dirt that we recover in this way and that is taken from the sugar. I may say that frequently we take as many—depending, of course, on the amount of work we are doing—as seventy and eighty barrels of this dirt and scum daily, containing four hundred pounds to the barrel.

"By the COURT:

"Q. What is done with that?

"A. Carried away into waste. It has no value that we know of.

"By Mr. SEMMES:

"Q. Wouldn't it be good as manure?

"A. It might be, but we pay for removing it. We got no return

for it. Photograph No. 30 is the vacuum pan. It is an exhibit of the first *page* of manufacture after this liquid has left the bone-black filters. It is the vacuum pans of the refinery for the crystallizing of this filtered liquid into grains.

"Q. What happens to the vacuum pans?

"A. This filtered liquid is made into grains. The vacuum pan has a vessel, shown here, containing a series of coils, and the steam is turned on the pans.

"Q. Boiled in a vacuum?

"A. Yes, sir; at a low temperature. That is one of the operations of the refinery in which a good deal of skill is required, in filling this grain with liquid from time to time and until finally the pan is finished.

"Q. What do you call it—'finishing pan'?

"A. Yes, sir. We term it a strike.

"By the COURT:

"Q. Does the grain form in the pan?

75 "A. Yes, sir.

"Q. In the pan?

"A. Yes, sir; in the pan itself. I will show you. Photograph No. 30 shows the vacuum pan itself. This is a sample, No. 16, in our exhibits of the magma.

"Q. That is what you term this sugar at that stage in the process of refining?

"A. Yes, sir; after boiling in the vacuum pan. It is in that condition when it is dropped in the vacuum pan for the next stage of manufacture.

"Q. Before going into the centifugals?

"A. Yes, sir; that, as I said before, requires a great deal of skill in the handling.

"Q. That is what might be called a wet refined sugar?

"A. Yes, sir.

"Q. The next process is to dry it?

"A. Yes, sir; but the grain is already perfectly formed here in the vacuum pan. The next exhibit and the next stage of manufacture is shown by our photographs marked No. 31, showing the centrifugal machines, shafting, pulleys, beltings, etc.

"Q. What is the function of the centrifugal?

"A. The function is to remove this magma after it leaves the pan and separate the grain and moisture, leaving the dry sugar.

"Q. The syrup goes out in one direction and the sugar dries remains in the machine?

"A. Yes, sir. Here is an exhibit of the sugar from the machine, showing the contrast between the sugar leaving the vacuum pans and the sugar after being machined in the centrifugal. Our first photograph is marked No. 32, and it is a view of our cube or block sugar machines showing the machine by which the sugar is pressed into these cubes, as shown in sample marked No. 19. The sugar from the centrifugal machines comes into this cube machine, and by a system of pressing is pressed into these cubes. The sugar is

pressed in these by an application of hot air for a certain
76 number of hours and is perfectly dry, as shown by the form shown. Exhibit No. 33 is a photograph of the granulation machine, and sample marked 21 is an exhibit of sugar after being thus granulated in these granulating machines. The machine is simply a cylinder drum. This extends six feet in diameter and twenty-five feet long, and by the force of hot air being forced through at a great rapidity through these drums and the drum being kept in motion the sugar is thoroughly dried of any moisture remaining in it after leaving the centrifugal machine and becomes a finished product, with an attractive appearance, such as shown in this sample No. 21, which is a sample of finished granulated sugar.

"Q. It is merely a drying machine?

"A. This is the drying machine. We have to conduct an operation for making crystals in the vacuum pans.

"Q. The main function of that apparatus is to finish the drying process?

"A. Yes, sir; and make the grains more sparkling—more handsome in appearance for table sugar.

"Q. It is what you might call a polishing machine, is it?

"A. Yes, sir; sparkles.

* * * * * * *

"By the COURT: The next exhibit is photograph marked 34, showing our powder mills for making a special grade of sugar known to the trade as powdered sugar, which is considered the finest grades of crystal-iz- sugar, used by confectioners for crystallizing fruits, etc. This is a sample of the pulverizing press. It goes through 13 discs, revolving at a great rapidity, shown in this photograph No. 34, completely pulverizing the grain and leaving the product as shown in the sample marked No. 20, powdered sugar.

* * * * * * *

"By Mr. SEMMES:

"Q. Is that after granulation?

"A. Yes, sir; after leaving the granulation it is completed into powder, and there is absolutely no moisture left in the sugar, and both of these grades of sugars, granulated and pow-ered,
77 undergo all these operations as I described it. I have forgotten again to show one sample taken without a photograph. It is sample No. 18, which exhibits a sample of the syrup coming from the centrifugal machines. While drying the sugar in these machines this fluid is drawn from perfections or sieves in the machines and runs into tanks, where it is again pumped to the pans and taken in for boiling again through a number of skillful stages.

"By Mr. SEMMES:

"Q. That No. 18 is the moist sugar that comes from the centrifugal?

"A. It has water and syrup between the grains of sugar as it

comes through the vacuum pans, and is thrown out as it goes through the sieves of the centrifugal. Sample No. 22 is a grade of sugar manufactured by us, known as confectioners' "A," in which the operation of granulating is omitted and the grain is formed in the vacuum pans to the size desired by the trade, after the operation of machining in the centrifugal is, of course, conducted, but after leaving that it is packed in barrels for shipment, and afterwards retained some little moisture.

* * * * * * *

"By Mr. SEMMES:

"Q. How do the confectioners use that sugar?

"A. They use it in their confections; I am not familiar with that.

"Q. For what reason is that sugar manufactured?

"A. It is to satisfy the trade. Eventually, they get better results out of this sugar.

* * * * * * *

"No. 36 and No. 37 is a photograph of the apparatus called the Lily evaporator, its object being to bring to a greater degree of density the liquid resulting in sweet water and such as comes from the washing of the tubs and bone-black apparatus, by which the liquid is drawn from the tubes and through which steam is passed and thickened up to the required density.

"Q. This is the residue after refining?

"A. Yes, sir; molasses, which is also a product of a refinery. I think I have exhibited all the manufactured samples in de-
78 tail and the raw material from which we manufacture, which are all here as exhibits.

"By the COURT:

"Q. During what process in the stage of refining do you get this molasses?

"A. This molasses that we produce?

"Q. Yes.

"A. No. 33 is a sample. Here it is. We get it at the full final stage of the process. It is simply a substance containing sugar, but mixed with it are impurities that have been taken out at other stages of refining to such an extent as would prevent this from being turned out as granulated sugar.

"Q. Where does that come from—the final stage?

"A. In the process of crystallizing. Finally—throwing off syrups from time to time—we finally got to the stage where we cannot boil it into grain, as it would not be profitable for the refinery to attempt to extract the sugar in this molasses; it would not justify us to go to the expense of obtaining the sugar remaining in it from it. I think I have described the process."

Analysing this testimony, we find that the process of refining sugar by the defendant company is conducted in the following manner, substantially, viz:

The sugar is received from the plantations where it is first man-

ufactured, or from abroad in barrels, bags, or packages in which it has been packed, and the first process after it has been received is to put it in vessels specially constructed for the purpose, and melt it and bring it to a tendency for refining.

This is done through the instrumentality of large vessels called "melters."

The next process is that of "clarification," which is done by means of what are technically styled "blow-ups," large wide tanks containing steam, and the liquid is strained through bags after leaving the blow-ups for the purpose of removing any insoluble impurities which exist therein.

Then follows the "filtering" process through large bone-
79 black filters—that is, filters containing "burnt animal bone-black," and it is used for the purpose of "decoloring and removing impurities" from the liquid.

The testimony of the superintendent explains the effect of the foregoing processes upon the raw or unrefined sugar to be as follows, viz:

"We exhibit this to *to* show the amount of the impurity and dirt that we recover in this way, and that is taken from the sugar. I may say that we frequently take as many—depending, of course, on the amount of work we are doing—as seventy or eighty barrels of this dirt and scum daily, containing four hundred pounds to the barrel."

The next is the "granulating" process, which is conducted by depositing into vacuum pans, wherein the liquid is crystal-ized into grains, which is accomplished by means of a series of coils of pipe through which the steam is conveyed into the vacuum pan at a low temperature.

Of this process, the testimony of the superintendent speaks as follows, viz:

"That is one of the operations of this refinery in which a good deal of skill is required, in filling this grain with liquid from time to time and until finally the pan is finished."

This is called the "finishing pan," and the drying process is technically termed a "strike," and that is because the liquid becomes granulated by this process, the grains forming in the pan. In that condition it is called "wet refined sugar."

The next process is drying the sugar thus granulated by passing it through the centrifugal machines, which is described by the superintendent thus:

"The function (of the centrifugal) is to remove the *magma* after it leaves the pan and separate the grain and moisture, leaving the dry sugar."

The sugar passes from the centrifugal machines into what is termed a cube machine, the sugar being pressed into cubes by the application of heated air, and is made perfectly dry.

The superintendent thus describes the process, viz:

"The machine is simply a cylinder drum. This extends six feet in diameter and twenty-five feet in length; and by the force
80 of hot air being passed with great rapidity through these drums, and the drums being kept in motion, the "sugar is

thoroughly dried of any moisture remaining in it after leaving the centrifugal machine, and becomes a finished product, with an attractive appearance, such as is shown in the sample No. 21, which is a sample of the finished granulated sugar."

The witness then describes the process of making "a grade of sugar known to the trade as powdered sugar," which is considered to be one of the finest grades of sugar, and chiefly used by confectioners for crystal-i-ng fruits, &c.; but this needs no special attention, as it plays no part in this controversy, and the same may be said of the syrup which comes from the centrifugal machines during the process of granulating sugar.

The latter process is described by the witness in this way, viz: "The moist sugar that comes from the centrifugals has water and syrup between the grains, as it comes through the vacuum pans, and is thrown out as it goes through the seives of the centrifugals."

Again, the superintendent says that "the syrup is the final process of crystal-ization, in which it is thrown off from time to time; that we finally get to the stage where we cannot boil it into grain, as it would not be profitable for the refinery to attempt to extract the sugar in this molasses," &c.

On this state of facts, is the defendant a *manufacturer* in the sense and within the meaning of article two hundred and six of the constitution of 1879?

Before expressing an opinion on that question we will examine the adjudications of this court in which it has placed an interpretation upon that article and defined the term *manufacturer* as applied to different industries and pursuits which were under investigation therein, so that we may the better draw the analogy between them.

In City *vs.* Le Blanc, 34th Ann., 597, this court said: "A manufacturer is not one who creates out of nothing, for that would surpass human power; neither is he one who produces a new article out of materials entirely raw.

"He is one who gives new shapes, new qualities, new combinations to matter which has already gone through some artificial process.

81 "A shoemaker is none the less a manufacturer because he does not tan the leather; the tanner is none the less a manufacturer of leather because he does not breed and raise the bullocks from which the raw hides are taken. The tanner makes leather to sell, but he does not buy the hides to sell again.

"He produces the article of leather and depends upon the labor which he bestows upon the raw material." The court sustained the defendant's exemption from the payment of a license on the ground that his occupation was that of a cooper and made barrels and hogsheads from rough logs and splits, &c.

In City *vs.* Ernest & Co., 35th Ann., 746, the court sustained the defendant's exemption as a rice miller, and in so doing employed this language, viz:

"A manufacturer is defined to be one who is engaged in the business of working raw materials into wares suitable for use—who gives

new shapes, new qualities, new combinations to matter which has already gone through some artificial process.

"A manufacturer prepares the original substance for use in different forms. He makes to sell, and depending for his profit on the labor which he bestows on the raw material.

"Rice is an agricultural product extensively raised in this State. The milling of it is effected by different processes, during which it passes from its original roughness to conditions in which it is fit for different uses.

"Deprived of its outer shell and of the silica enveloping the denuded grain, it becomes an object of marketable value. It is only after several manipulations that various substances or products are obtained, which are: the hull, the bran, the flour, the red grain, and, finally, the cleaned and polished kernel, all of which become separate and distinct articles of commerce.

"It is not easy to distinguish between the several processes to which rice is subjected by the manufacturer, who, from beginning to end, works it up into various forms for use. It may be said to undergo one and the same process throughout. Even if a distinction could be realized, the working of the raw material is accomplished continuously. The person who puts it through the process
82 gives to it gradually new shapes, new qualities, new combinations, and thus is a manufacturer within the intent and scope, the spirit and letter, of the constitutional immunity."

In State *vs.* Dupre & Hearsey, 42 Ann., 561, the court maintained the defendants' exemption from the payment of a license, pursuing the business of editing, printing, and publishing a daily newspaper, and the court, after making the foregoing quotation from State *vs.* Le Blanc, used this language, viz:

"Keeping this definition in view, the statement of facts embodied in this record shows that defendants use in their business valuable machinery and implements; that, in addition to the clerical and editorial departments, they employ a large number of mechanical laborers, such as type-setters, engineers, pressmen, and their assistants; that they purchase and use great quantities of raw materials, such as paper, ink, glue, *etc.*; that by means of this machinery and mechanical labor they convert this raw material into a new and distinct article for use, and in commercial demand called a newspaper, which they sell directly to dealers and consumers."

But this court placed its decision principally upon the grounds (1) that the provisions of the license law of that year did not in terms embrace the defendants' business; (2) that the publishing of books and the manufacture of stationery being expressly exempt under article two hundred and seven, by fair analogy like exemption should be extended to a newspaper, under article two hundred and six of the constitution.

Hence that decision is somewhat *sui generis* and exceptional and cannot be accepted as generally applicable as a precedent.

In State *vs.* Biscuit Manufacturing Company, 47th Ann., 160, this court maintained the exemption of the defendant as a manufacturer of crackers, biscuit, and Italian paste, the proof disclosing that the

"process of manufacture is that the flour leaves the barrels and passes through a powder-sifter, thence into a powder-mixer, from this into a dough-box on tracks, and is worked into two different kinds of dough; goes into a cutting machine, and finally into the oven, from which the complete articles are taken, boxed, and shipped. The material is handled exclusively by machinery."

83 Upon this statement the court say: "It will be perceived that the establishment is a manufactory in which raw materials are made into wares suitable for use. There are new shapes, new combinations, new qualities, given to the raw material by the process of manufacturing the articles from the original material."

After citing other cases and distinguishing them therefrom, the court concluded its opinion as follows, viz:

"In the instant case the identity of the original material is lost in the new articles created—in the change of shape. New qualities and new combinations which enter into their composition *when* render them suitable for use in an entirely different manner from the manner in which the original material could be used."

In Fertilizing Company *vs.* Assessors, 48th Ann., 1476, we held that a process resulting in vaporizing the moisture in offal and animal matter, disposing of the grease, separating the grease or oils of such refuse and matter, and converting the *residuum* into a fertilizer is the manufacture of such fertilizers within the scope of the constitution.

The foregoing are the cases in this court on which the defendant relies for the maintenance of its exemption.

In State *vs.* Hemard, 23rd Ann., 263, the defendant claimed exemption from the payment of a license as the proprietor of a cotton-press because he employed the cotton pickery exclusively for his own use, and that, as a commission merchant, he was accustomed to purchase wet, damaged, and muddy cotton and clean and prepare same for market in his cotton pickery and sell it for his own account.

The district court rejected his claim, and this court affirmed the judgment.

In State *vs.* Mannessier, 32nd Ann., 1075, the defendant appealed from a judgment condemning him to pay a license as a peddler of ice cream and made claim to exemption on the ground that he made sales exclusively of articles of his own manufacture, and this court denied the exemption.

In State *vs.* Eckendorf, 46th Ann., 131, we held that a baker who makes and sells his own bread exclusively is not entitled to exemption from the payment of a license as a manufacturer of bread, the proof disclosing "that bread is made from flour, the

84 dough being prepared with yeast and salt, and required an experienced hand to bake it properly."

In Patterson *vs.* City, 47th Ann., 276, we find some very pertinent and controlling expressions of this court with regard to the import and meaning of the term *manufacture* as it is employed in the constitution, notwithstanding our opinion dealt with the exemption in article two hundred and seven.

We said:

"The constitution uses the word manufacture in its ordinary sense. Its natural import is to produce an article, and its common application refers to changing the raw material into some new and useful form."

And in speaking of the exemptions which are contained in article two hundred and seven, our opinion says: "In all these exemptions the constitution contemplates manufactories that *produce an article, not a* a *mere addition or mode of use of an article already manufactured.*"

In City *vs.* Coffee Company, 46th Ann., 86, the defendant claimed exemption as a manufacturer of coffee, and same was sustained by the lower court; but this court reversed its judgment, and in the *court* of their opinion said:

"The defendant corporation contends that by means of a secret non-patented process it is enabled to make a selection of green coffee having the qualities required for the purpose intended, which coffee, after being subjected to manipulation, being roasted and allowed to cool in a particular manner, produce- certain brands of coffee, each having a recognizable taste and flavor.

"The defendant corporation says and insists that no chemicals of any kind are used during the secret process, and it is upon the production of its different brands of roasted coffee that it relies to be held to be 'a manufacturer of coffee.'"

The court then observed that "we are satisfied that the defendant corporation does not claim that it is a manufacturer by reason of grinding coffee and thereby changing its form;" but that, on the contrary, "its claim to be a manufacturer of coffee is based wholly on the production of brands of unground roasted coffee."

The opinion then cites with approval the following extract
85 from Hartrauft *vs.* Wiegmann, 121 U. S., 609, viz:

"We are of opinion that the shells in question here were not manufactured and (complainants) were not manufacturers of shells. * * * They were still shells. They had not been manufactured into a new and different article, having a distinctive name, character, or use from that of a shell. The application of labor to an article, either by *brand* or by mechanism, does not make the article necessarily a manufactured article within the meaning of that term as used in the tariff laws. Washing and scouring wool does not make the result a manufacture of wool. Cleansing and ginning cotton does not make the result a manufacture of cotton."

The court, in the principal case, then said:

"It is not every employment of labor which will make the thing upon which it is employed a manufacture. It has been held that the great and laborious pursuits of mining and ship-building are not manufacturing occupations."

And upon the foregoing five cases counsel for the plaintiff relies as well as upon those cited by the defendant's counsel.

This *résumé* embraces extracts from all the pertinent decisions of this court with regard to the terms *manufacturer* and *manufacture* as they are employed in the exemption articles of the Constitution,

and we propose to add thereto a few extracts from the decisions of the courts of other jurisdictions, so as to make a complete *consensus* of judicial opinion on the question at issue.

The following cases are cited by the defendant's counsel in their brief, viz:

"In the case of the United States *vs.* Semmer, 41 Fed. Rep., 327, the court, after stating that when certain materials found in nature are placed in a melting pot the substance produced is crude glass, proceeds thus: 'It is a manufacture. The component materials are transformed into a new substance. Now, that same glass may be, by the application of labor, transformed from the molten state, by a process of blowing and cutting, into an article which is known as cylinder or window-glass, which is a manufacture of glass, because it is of a distinctive character and has a distinctive name and a distinctive use from the crude glass out of which it is made;
86 and so, by a different process of manufacture, this same crude glass, when poured upon a table and pressed with a roller, become- what is known in trade and commerce as rough or rolled cast plate-glass. That also is a manufacture of glass. That also has a use, character, or name distinct from the use, character, or name of the crude glass in the crucible out of which it is made. By various processes and by the application of a great deal of labor this rough or rolled plate-glass is eventually transformed into polished plate-glass. It needs no witness to tell us that polished plate is a manufacture of glass within the definition of the supreme court, and therefore a manufacture of glass.'"

Similar views are expressed by the Supreme Court of the United States in the recent case of Tide Water Oil Company *vs.* United States, 171 U. S. Rep., 216.

In that case the court said:

"The primary meaning of the word 'manufacture' is something made by hand as distinguished from a natural growth; but as machinery has largely supplanted this primitive method, the word is now ordinarily used to denote an article upon the material of which labor has been expended to make the finished product. Ordinarily, the article so manufactured takes a different form, or at least subserves a different purpose, from the original materials, and usually it is given a different name. Raw materials may be and often are subject to successive processes of manufacture, each one of which is complete in itself, but several of which may be required to make the final product. Thus, logs are first manufactured to boards, planks, joists, scantlings, etc., and then by entirely different processes are fashioned into boxes, furniture, doors, windows, sashes, trimmings, and the thousand and one articles manufactured wholly or in part of wood. The steel spring of a watch is made ultimately from iron ore, but by a large number of processes or transformations, each successive step in which is a distinct process of manufacture and for which the article so manufactured receives a different name."

The following are the cases cited by the plaintiff's counsel in their brief, viz:

This, in Rex *vs.* Tregoming, 2 Young & Jervis Reports, 132, "where a printer of calicoes was held not to be a manufacturer, it was said: 'It is contended that, for the purpose of this act,
87 the printer is the maker and manufacturer of these goods, likening this, as I conceive, to the familiar case of the maker of a picture, who is, of course, he who spreads the colors upon the canvas which produce the impression upon the mind, and not the man upon whose canvas the picture is printed. There is, however, no resemblance whatever between the two cases. The maker and manufacturer of these goods, according to the plain sense and common understanding of these words, is he who manufactures the articles upon which the print is impressed. He who puts the stamp upon the goods is not the maker or manufacturer within the common meaning of these words, upon the plain construction of which I have no doubt."

Again:

"In Frazee *vs.* Maffitt, 20 Blatchf. (U. S.), 267, it was held that a process of baling hay was not a manufacturing, and the court said, among other things: 'Dried apples would not be called a manufactured article, though the apple is peeled and cored and sliced, and dried by exposure to the sun and *manipulation;* the substance of dried apples is still apples. *Change of name and manipulation* does not necessarily constitute manufacture under the meaning of section 2516.'

"Thus, it was held in Commonwealth *vs.* Glitinam, 64 Pa. St., 100: 'The rectifying process is not a manufacturing process. Webster says it means correcting, amending, refining by distillation, sublimation, adjusting. Rectifying distilled spirits made in another State does not constitute it spirituous liquors manufactured within this Commonwealth. The spirits were not manufactured here; they were only corrected or refined in this Commonwealth.'"

In United States *vs.* Tenbrook, Pet. (C. C.), 180: "The use of a still for rectifying spirits *already distilled* is not the distilling of spirits within the meaning of an internal-revenue act, nor in the common understanding of mankind."

And affirming the case on appeal, United States *vs.* Tenbrook, 2 Wheat, 247:

"The rectification or purification of spirits after their distillation has been complete, in order to fit them for certain purposes of combination with other materials, is no part of the process of distillation. The distillation of spirits and the rectification of them
88 after they are distilled appear to be separate and distinct acts."

Considering these various expressions of opinion with regard to the term *manufacturer*, what is the proper conclusion to arrive at in respect to the defendant's employment?

This court said that a cooper who makes barrels and hogsheads from rough logs and splits of wood is a manufacturer, because he gave new shapes, new qualities, and new combinations to matter which had already gone through some artificial process. It held that a rice miller is a manufacturer because he works raw material

into wares suitable for use and makes from the denuded grain, after several manipulations, various commercial products and substances, such as bran, flour, red grain, and the polished kernel.

It held a corporation which made crackers, biscuit, and Italian paste from flour to be a manufacturer, because the raw materials were made into wares suitable for use, new qualities being given to the raw materials by various manufacturing processes whereby the identity of the raw material was lost.

That the process by which the moisture in offal and animal matter is vaporized and the grease and oil separated therefrom, and the *residuum* converted into fertilizers, is a manufacturing process.

But it has held that one who purchases wet, muddy, and damaged cotton and cleans and prepares same for sale is not a manufacturer, because cleaning and ginning cotton do not make the result the manufacture of cotton.

That one who makes ice cream from sugar, ice, milk, and other ingredients is not a manufacturer.

That one who makes bread from flour, salt, and other ingredients is not a manufacturer.

That the natural import of the term manufacture is to produce an article by changing the raw material into some new and useful form, and that to produce an article is not a mere addition or mode of use of an article already manufactured.

That a corporation which by a secret non-patented process is enabled to make a selection of green coffee possessing the requisite qualities for an intended purpose, after having been subjected
89 to certain manipulations, is not a manufacturer.

That one who by the application of labor and mechanical skill makes certain kinds of shells more polished and attractive in appearance is not a manufacturer, because he did not manufacture them into new and different articles having a distinctive name, character, or use from that of shells, for they remained shells still.

That the washing and scouring of wool does not make the result a manufacture of wool.

That mining and ship-building are not manufacturing occupations.

That the printer of calicoes is not a manufacturer, because he does not make the goods, only prints the colors upon them and improves their salable value, unlike the painter who with his brush spreads colors upon a canvass and thereby *creates* a work of art which produces a pleasing impression upon the mind and captivates the fancy of the beholder.

The result of the evidence as applied to the authorities, in our opinion, is that the process of refining sugar and molasses, as it is explained by the defendant's superintendent, is not a manufacturing process, and that defendant is not a manufacturer in the general and common acceptation of that term.

At its incipiency, the defendant purchases on the market or from planters a supply of *sugar* in a completely manufactured state, and, by skillful manipulations, through the instrumentality of vast, elaborate, and complicated machinery, and by an application

thereto of steam-power and great air-pressure, same is first melted, then cleansed of its impurities, then bleached and improved in color, then dried, granulated, and brought into *sugar* again—in exactly the same state it was when these manipulations were commenced, though greatly improved in purity and beauty of appearance and rendered more merchantable.

By this process *sugar* is refined in grade, improved in quality, and bettered for commercial use, but it remains *sugar* still, like the cotton and the shells.

It is given no new name, use, shape, or combination.

It is the self-same, identical raw material, just as when
90 first manufactured from the cane and marketed by the planter.

Tax exemptions are strictly construed, and cannot be sustained except upon clear proof. Doubt is fatal to the claim.

IV.

In our former opinion we said: "There is, however, a doubt in our minds as to whether the law authorizes the State to recover on rule licenses for any year anterior to 1897," and consequently gave judgment only for the sum of $3,500.00 as the amount of the license due by the defendant for the year 1897, with two *per cent.* per month interest from the 1st of March, 1897, and ten *per cent.* attorneys' fees.

When, however, we granted a rehearing, that opinion was set aside and the whole controversy set at large again, and on the resubmission of the case the counsel of both parties gave this question their attention in their briefs.

We make the following quotation from the application of the defendant's counsel for a rehearing, viz:

"Third. Under these circumstances we submit that the most satisfactory course to pursue is, that the court grant a rehearing and set the cause again for argument as if it had never been considered, and that an oral argument be allowed on the rehearing. An oral argument is preferable because the case is reduced to one of fact—that is to say, whether the defendant company is a manufacturer of sugar or not; so that the oral argument can be confined by the court to the question of fact, and thus save consumption of time.

"This case is important when the amount involved is considered, because if decided against the defendant *it will be compelled to pay the city license for the years claimed by the State in this suit, with penalties, and the excessive interest of two per cent. per month*, and in addition thereto the defendant becomes liable to pay the licenses, both State and city, for the year 1898, with similar penalties, to say nothing of the claim of the State to institute a new suit for the licenses of the years disallowed in this proceeding because of the form of action, including the penalties for a delinquency, which was unintentional, because the defendant supposed it was exempt." (Our italics.)

91 Counsel for the State cites the provisions of the license law of 1890, as follows, viz: "That if any business shall be conducted without a license * * * the officer whose duty it is to issue licenses shall, through the attorney herein provided for, on motion in the proper courts * * * take a rule on the party or parties doing such business, to show cause * * * why said party or parties should not pay the amount of the license claimed and penalties, or be ordered to cease from further pursuit of said business until after having obtained a license," &c.

Section 18 of act 150 of 1890.

Counsel cites the case of McGuire, tax collector, *vs.* Vogh, 36th Ann., 812, in which this court placed the following interpretation on a similar statute of 1880, viz:

"A license could not be collected by sale of an occupation, and it is upon an occupation that the license is imposed. For that reason, doubtless, a *rule* is authorized to be taken on motion against the party who has not obtained his license to show cause why he shall not stop his business (Acts of 1880, p. 152); and we see no reason why the rule should not also embrace the collection of the license, although it is not prescribed as the mode of collecting licenses, &c."

But the legislature of 1886, doubtless recognizing the propriety of the court's suggestion in the Vogh case, amended the license law in that respect so as to conform thereto—sec. 17, act 101 of 1886—and section 18 of act 150 of 1890 is an exact reproduction thereof.

In State *ex rel.* Pacquet *vs.* Judge, 49th Ann., 764, this court construed and enforced the statute in question. Section 18 of act 150 of 1890.

In State *vs.* Insurance Co., 43 Ann., 138, this court enforced the provisions of act 101 of 1886.

In City *vs.* Insurance Co., 41 Ann., 1142, the plaintiff proceeded by rule under the act of 1886 to enforce the payment by the defendant of licenses for the *two years* 1887 and 1888, and this court sustained the proceeding and amended the judgment appealed from so as to give judgment for the two *per cent.* per month interest allowed by that act, same being similar in that respect to the statute of 1890.

92 The foregoing decisions and the statutes they refer to have resolved the doubt we entertained with regard to proceeding by rule for the recovery of the delinquent licenses in favor of the State for the years prior to 1897, and for that reason we are of the opinion that the State is entitled to recover judgment against the defendant and appellee for the amount of the annual license for each of the years in which the petition charges its delinquency—that is to say, for the sum of $3,500.00 for each of the years 1892, 1893, 1894, 1895, 1896, and 1897, with interest and attorneys' fees and cost.

It is therefore ordered and decreed that our former judgment and decree be annulled and set aside, and it is further ordered and decreed that the judgment appealed from be likewise annulled and reversed, and proceeding to render such judgment as should have

been rendered by the judge *a quo*, it is adjudged and decreed that the State of Louisiana do have and recover of and from The American Sugar Refining Company, defendant and appellee, the sum of three thousand five hundred dollars for each and every one of the years 1892, 1893, 1894, 1895, 1896, and 1897, with two *per cent.* per month interest upon each of said respective amounts from the first day of March of each one of said years respectively and ten *per cent.* upon the aggregate amount of said several sums, capital and interest, as attorneys' fees and all costs of both courts.

The right to apply for rehearing is reserved to both parties.

Final Judgment.

(Extract from the Minutes.)

NEW ORLEANS, TUESDAY, *March 7th*, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Newton C. Blanchard, associate justices.

Absent: Francis T. Nicholls, chief justice.

His honor the presiding justice pronounced the opinion and judgment of the court in the following case:

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

93 (On rehearing.)

It is ordered and decreed that our former judgment and decree be annulled and set aside, and it is further ordered and decreed that the judgment appealed from be likewise annulled and reversed; and, proceeding to render such judgment as should have been rendered by the judge *a quo*, it is adjudged and decreed that the State of Louisiana do have and recover of and from The American Sugar Refining Company, defendant and appellee, the sum of three thousand five hundred dollars for each and every one of the years 1892, 1893, 1894, 1895, 1896, and 1897, with two *per cent.* per month interest upon each of said respective amounts from the first day of March of each one of said years respectively, and ten *per cent.* upon the aggregate amount of said several sums, capital and interest, as attorneys' fees and all costs of both courts.

The right to apply for rehearing is reserved to both parties.

Stipulation Waiving Legal Delays to Apply for Rehearing.

Supreme Court of Louisiana.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 12877.

The plaintiff and appellant has no reason to complain of the decree rendered in its favor, and waives the right reserved to it to apply for a rehearing.

17th M'ch, 1899.

(Signed) E. H. McCALEB, JR.,
Attorney for Plaintiff and Appellant.

Defendant and appellee waive right to apply for rehearing.

17 March, 1899.

(Signed) THOS. J. SEMMES,
Att'y for Am. Sugar Ref. Co.

(Endorsed:) Supreme court of La. No. 12877. State of La. *vs.* Am. Sugar Ref. Co. Waiver of both parties of right to apply for rehearing. Filed March 17th, 1899. (Signed) T. C. McC. Hyman, clerk.

Petition for Writ of Error.

Supreme Court of Louisiana.

THE STATE OF LOUISIANA
vs.
THE AMERICAN SUGAR REFINING CO. } No. 12877.

94 The petition of the defendant in the above-entitled cause prays to be allowed a writ of error, with supersedeas, to have the decree herein reversed by the Supreme Court of the United States, so that the Federal question decided by the supreme court of Louisiana against the defendant be reversed. The defendant claimed in its answer that section nine of the license act of 1890 discriminated against this defendant and denied to it the equal protection of the law secured to all persons by the fourteenth amendment of the Constitution of the United States, and for that reason said section nine, by which a license tax was imposed on those who conducted the business of refining sugar who were not planters, was void. The opinion and decree of the court rejected this contention of the defendant.

(Signed) THOS. J. SEMMES,
Att'y for Pet'r.

Writ of error allowed, returnable in thirty days to the Supreme Court of the United States, with supersedeas, on giving bond in the sum of fifty thousand dollars.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice.

N. O., March 17, 1899.

(Endorsed:) No. 12877. Supreme court of Louisiana. The State of Louisiana *vs.* The American Sugar Refining Co. Petition of defendant and appellee for writ of error. (Signed) Thos. J. Semmes, att'y. Filed March 17th, 1899. (Signed) T. McC. Hyman, clerk.

Copy of Writ of Error and Endorsement.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between The State of Louisiana and John Brewster, State tax collector, second district, parish of Orleans, State of La., and The American Sugar Refining Company, No. 12877 of the docket, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under
95 the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of the clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said American Sugar Refining Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the said Supreme Court, the 17th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

(Signed) E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
—— ——.

(Endorsed:) No. 12877. American Sugar Refining Company, plaintiff in error, *versus* State of Louisiana and John Brewster, State tax collector, defendants in error. (Writ of error.) Copy of a writ of error lodged in the clerk's office of the supreme court of Louisiana, in pursuance of the statute in such cases made and provided, this 17th day of March, one thousand eight hundred and ninety-nine. (Signed) Thos. J. Semmes, attorney of plaintiff in error. Filed March 17th, 1899. (Signed) T. McC. Hyman, clerk.

96 *Bond for Writ of Error.*

Know all men by these presents that we, the American Sugar Refining Company, as principal, — the National Surety Company of New York, as surety, are held and firmly bound unto the State of Louisiana and John Brewster, State tax collector, second district, parish of Orleans, State of Louisiana, in the full and just sum of fifty thousand, $50,000, dollars, to be paid to the said State of Louisiana and the said John Brewster, State tax collector, as aforesaid, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 17 day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a supreme court of Louisiana, in a suit depending in said court, wherein the said State of Louisiana and said John Brewster, State tax collector, as aforesaid, are plaintiffs and the said American Sugar Refining Company is defendant, judgment was rendered against the said American Sugar Refining Company, defendant, and the said American Sugar Refining Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Louisiana and the said John Brewster, State tax collector, as aforesaid, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, within 30 days from date hereof:

Now, the condition of the above obligation is such that if the said American Sugar Refining Company shall prosecute its writ to effect and answer all damages and cost if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) THE AMERICAN SUGAR REFINING COMPANY,
By its attorney, THOS. J. SEMMES. [L. S.]
Do. NATIONAL SURETY CO. [L. S.]
[SEAL.]
Do. JOS. H. DE GRANGE, *Resident Vice-President.* [L. S.]
Do. EDWIN SHELBY, *Resident Ass't Sec'*

Sealed and delivered in the presence of—

——— ———.

New Orleans, March 17, 1899.

Approved. (Signed) FRANCIS T. NICHOLLS,
9—264 *Chief Justice.*

97 (Endorsed:) No. 12877. Supreme court of the State of Louisiana. The State of Louisiana, The State of Louisiana and John Brewster, State tax collector, *vs.* The American Sugar Refining Company. Bond for writ of error. Filed March 17, 1899. (Signed) T. McC. Hyman, clerk.

Assignment of Errors.

THE AMERICAN SUGAR REFINING CO., Plaintiff in Error,
vs.
THE STATE OF LOUISIANA, Defendant in Error. } No. 12877.

Assignment of errors filed by The American Sugar Refining Co., plaintiff in error.

1. The supreme court of Louisiana has erred in holding that the provisos of section nine of the act of the General Assembly of Louisiana, by which planters are not subjected to the license tax imposed by that section, do not discriminate against the plaintiffs in error, and thereby deny to it the equal protection of the laws secured to all persons by the fourteenth amendment of the Constitution of the U. S.

2. Said court erred in holding that the business of sugar refining conducted by the plaintiff in error was not the business of a manufacturer of sugar, and therefore exempt from the payment of license taxes.

3. Said court erred in holding that the State was entitled to proceed by rule for the enforcement of the license taxes set forth in said rule.

(Signed) THOS. J. SEMMES,
Att'y for Pl'ff in Error.

(Endorsed:) Supreme court of La. No. 12877. American Sugar Refining Co. *vs.* State of Louisiana. Assignment of errors. Filed 17th March, 1899. (Signed) T. McC. Hyman, clerk.

98 *Agreement of Counsel as to Transcript.*

Supreme Court of Louisiana.

THE STATE OF LOUISIANA
vs.
THE AMERICAN SUGAR REFINING CO. } No. 12877.

It is agreed that the photographs and samples referred to in the testimony, being unnecessary to a comprehension of the process described by the witness McFeteridge, be dispensed with as part of the transcript to be sent to the Supreme Court U. S.

20 March, 1899.

(Signed) E. H. McCALEB, JR.,
Att'y for Pl'ff.

Do. THOS. J. SEMMES,
Per EDWARD RIGHTOR,
Att'y for Def'd't.

(Endorsed:) Supreme court of Louisiana. No. 12877. The State of Louisiana *vs.* American Sugar Ref. Co. Agreement of counsel as to transcript. Filed March 23rd, 1899. (Signed) Paul E. Mortimer, dep. clerk.

Clerk's Certificate.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing ninety-eight pages contain a full, true, and complete copy of the transcript of the proceedings had in the civil district court for the parish of Orleans in a certain suit wherein The State of Louisiana and John Brewster, State tax collector of the second district for the parish of Orleans, State of Louisiana, were plaintiffs and The American Sugar Refining Company was defendant, and also of all the proceed-
99 ings had in this supreme court on the appeal taken by said plaintiffs, which appeal is now on the files thereof under the number 12877.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this first day of April, anno Domini 1899, and in the one hundred and twenty-third year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN, *Clerk.*

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

I, Francis Tillou Nicholls, chief justice of the supreme court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is clerk of the supreme court; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and *the* full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this first day of April, anno Domini 1899, and in the one hundred and twenty-third year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice.

100 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Louisiana and John Brewster, State tax collector, second district, parish of Orleans, State of La., and The American Sugar Refining Company, No. 12877 of the docket, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of the clause of the Con-

101 stitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said American Sugar Refining Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the — day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
—— ——.

102 [Endorsed:] No. 12877. American Sugar Refining Company, plaintiff in error, *versus* The State of Louisiana & John Brewster, State tax collector, defendants in error. Writ of error. Filed March 17, 1899. T. McC. Hyman, clerk.

103 UNITED STATES OF AMERICA, }
Eastern District of Louisiana. }

The President of the United States to the State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, wherein The American Sugar Refining Company is plaintiff in error and The State of Louisiana and John Brewster, State tax collector, second district, parish of Orleans, State of Louisiana, are defendants in error, to show cause, if any there be, why the judgment rendered against the said American Sugar Refining Company, as in said writ mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 17 day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

FRANCIS T. NICHOLS,
Chief Justice.

Service accepted; citation waived.

E. H. McCALEB, JR.,
Att'y for State of La.

M'ch 20, '99.

104 [Endorsed:] Supreme court. No. 12877. American Sugar Refining Company, plaintiff in error, *vs.* State of Louisiana and John Brewster, defendants in error. Citation. Marshal's return. Filed March 23rd, 1899. Paul E. Mortimer, dep. clerk.

105 THE UNITED STATES OF AMERICA, }
Eastern District of Louisiana. }

The President of the United States to John Brewster, State tax collector, second district, parish of Orleans, State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, wherein The American Sugar Refining Company is plaintiff in error and The State of Louisiana and John Brewster, State tax collector, second district, parish of Orleans, State of Louisiana, are defendants in error, to show cause, if any there be, why the judgment rendered against the said American Sugar Refining Company, as in said writ mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, this 17 day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

FRANCIS T. NICHOLLS,
Chief Justice.

Service accepted; citation waived.

E. H. McCALEB, Jr.,
Att'y — Jno. Brewster, Tax Collector.

M'ch 20, '99.

106 [Endorsed:] Supreme court. No. 12877. American Sugar Refining Company, plaintiff in error, *vs.* State of Louisiana & John Brewster, defendants in error. Citation. Marshal's return. Filed March 23rd, 1899. Paul E. Mortimer, dep. clerk.

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Clerk

Brf. of Parsons & Carroll for P. E.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. ~~204~~ 38

Filed Oct. 20, 1900.

THE AMERICAN SUGAR REFINING COMPANY,
PLAINTIFF IN ERROR,

versus

THE STATE OF LOUISIANA AND JOHN BREWSTER,
STATE TAX COLLECTOR, SECOND DISTRICT, NEW ORLEANS, DEFENDANTS IN ERROR.

On Writ of Error to the Supreme Court of the State of Louisiana.

BRIEF ON BEHALF OF THE AMERICAN SUGAR REFINING COMPANY, PLAINTIFF IN ERROR.

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OCTOBER, 1900.

T. H. THOMASON, PRINT, 826 NATCHEZ STREET, N. O.

SUPREME COURT OF THE UNITED STATES.

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STATEMENT OF THE CASE.

This suit was brought in the Civil District Court of New Orleans by the State of Louisiana against The American Sugar Refining Company to recover the sum of $3,500.00 per year as a State license tax for each of the years 1892, 1893, 1894, 1895, 1896 and 1897, with 2% per month interest from March 1st of each year, and 10% attorneys' fees, for carrying on the business of refining sugar and molasses. (Rec. pp. 1, 2).

The defenses made in the answer are briefly (Rec. pp. 4, 5):

1. That defendant is a sugar refiner and that sugar refining is manufacturing, and that defendant as a manufacturer is exempt from license taxation under Art. 206 of the Constitution of Louisiana of 1879;

2. That if such business is not a manufacturing business, then it is a mechanical pursuit, and as such exempt by the same article of the Constitution;

3. That if the business of sugar refining is not a manufacturing business and for that reason exempt, then that the Act No. 150 of 1890, of the General Assembly of Louisiana, under which the tax is claimed, violates the Constitution of the United States and is void in so far as it attempts to impose a license tax on defendant, because said Act denies to defendant the equal protection of the laws of the State, inasmuch as said Act does not impose equally a license tax on all persons engaged in the business of refining sugar and molasses, but discriminates in favor of planters who refine their own sugar and molasses and in favor of planters who granulate syrups for other planters during the rolling season, and therefore said Act conflicts with the Fourteenth Amendment of the Constitution of the United States, which prohibits any State from depriving a person of his property without due process of law and from denying to any person within its jurisdiction the equal protection of the laws.

Upon the trial the following uncontradicted facts were established (Rec. pp. 14-24):

The raw sugars, cane and beet, upon being received are first melted in vessels specially constructed and adapted

for that purpose called "melters." All raw sugars, whatever the grade, are subjected to this process and without it there can be no refining. (Rec. pp. 14-15).

The melted sugar is pumped to the topmost floor of the refinery to other vessels called "blow-ups." Here suitable re-agents are introduced into the liquid, the effect of which is to coagulate the impurities in the mass and by such coagulation render the succeeding process of filtering through bags more effective. In these blow-ups the liquid is also brought to the proper density and degree of temperature by the introduction of steam sufficient to accomplish the purpose. (Rec. p. 15).

From the blow-ups the liquid is passed into bag filters, entering at the open end and filtering through the cloth; the result of this first filtration is to remove much of the dirt and foreign matter—the insoluble mechanical impurities—from the liquid mass. (Rec. p. 16).

These filter bags are from time to time washed and compressed in the "scum press," the result being to save the sugar adhering to them and in the dirt, and to remove the dirt from the bags so that they may be again used; and the record shows (p. 18) that the defendant Company procures as much as twelve to fifteen tons a day of this refuse in the refining operations of its New Orleans refinery.

After the bag-filtration the clarified and partially filtered liquid is next filtered through bone-black filters. These are large metal retorts nearly filled with powdered animal bone-black, which decolorizes and purifies by taking up the salts and impurities, soluble and free, which have resisted the process of bag-filtration; and from them the liquid sugar comes clear as crystal. (Rec. p. 17).

The bye-process of renovating or revivifying the bone-black—an expensive item in the refining process—is accomplished by burning out as much as possible of the impurities and foreign matter which the bone-black has taken up. This is done in the kilns designed for that purpose. Notwithstanding this revivifying process, the bone-black gradually becomes ineffective for filtering purposes, and fresh

bone-black must be added from time to time to keep the mass up to the required standard. (Rec. p. 17).

The next direct step in refining proper is the re-crystallization of the now purified liquid sugar. From the bone-black filters the liquid is passed into closed copper vessels or pans, and is there boiled in a vacuum in the vessels which are known as "vacuum pans" or "finishing pans." (Rec. p. 18).

In the boiling, the grain of the sugar is formed from the liquid mass and is built up by the sugar-boiler in charge of the operation, by the exercise of most expert skill and judgment, until it has reached the size, large or small, which is proper for the particular kind of refined product designed to be produced, as the different kinds of ultimate product turned out require different sized crystals. (Rec. p. 19).

When the grain has been built up to the desired size, the entire contents of the "finishing-pan" are liberated and passed into the centrifugal machines, which is technically called making a "strike." This mixed mass of grained and ungrained sugar is called "magma."

The centrifugal machine is cylindrical in shape and the magma is introduced within it. The machine is then revolved rapidly, perhaps a thousand revolutions per minute, and the liquid of the magma is forced by centrifugal action through the screen-like lining of the machines and separated from the grained sugar, which is left within the machine. (Rec. p. 19).

The liquid so thrown off is carried back and again subjected to the boiling process in the vacuum pan, until all the sugar in it which can be economically crystallized out has been obtained from it. The remaining uncrystallizable liquid, which contains too much of impurity to justify the saving of the sugar in it, comes out commercially as molasses.

Going back to the grained sugar left in the centrifugals, we find there a mass of absolutely white sugar, not yet, however, thoroughly dried.

Thereafter the treatment differs according to the ultimate

products to be produced. These products are, in this refinery, four in number:

(1) *Cube or block* sugar is made by taking the sugar as it comes from the centrifugal machine and pressing it by hot air pressure in the "cube machine." The cubes are thereafter further dried in ovens, which process completes the extraction of moisture, and they are then ready for packing as a final product. (Rec. pp. 19-20).

(2) "*Confectioners A*" sugar is a kind designed to supply a particular trade or use. The grain of this product is designedly formed larger in the finishing-pan than for the other kinds, the processes up to and including the centrifugaling being otherwise the same. After machining in the centrifugal this product is ready for the market. The percentage of moisture is greater than in the other final products as no further drying process is applied; otherwise its purity is the same as in the other products. (Rec. p. 21).

(3) "*Granulated sugar*" is made by passing the grained sugar from the centrifugals into a revolving drum or cylinder, called a "granulator," into which hot air is introduced. The result is the removal of all moisture and the polishing of the grain by friction, giving it a bright, sparkling appearance. The granulator is also provided with a sifting appliance whereby uniformity in the size of grain of the final product is attained. (Rec. p. 20).

(4) "*Powdered sugar*" or "*pulverized sugar*" is used particularly for crystallizing fruits, etc. The granulated sugar is introduced into the pulverizing machine, which consists of a series of discs; these are revolved with great rapidity, with the result of reducing the grain to a fine, dust-like powder. (Rec. p. 20).

(5) To these products may be added the *molasses* procured from the liquid thrown off by the centrifugal machines, and hereinbefore mentioned. (Rec. p. 22).

Another bye-process of some magnitude, which enters largely into the economy of refining, is the process of evaporating the "sweet water"—the washings from the bag-filters containing more or less sugar. The apparatus is called a "Lily Evaporator" (Rec. p. 21) and accomplishes

the result of economically evaporating the surplus water from the liquid, whereby the latter is brought to the proper degree of density for being put through the successive refining steps of clarification, bag-filtration, bone-black filtration, crystallization in the finishing-pan, machining in the centrifugal and then according to the particular kind of product desired to be produced.

All raw sugars, whatever their grade or test, are subjected to the same process (Rec. p. 14). The melting of the sugar, its purification in liquid form and subsequent re-crystallization, are the essentials of all refining operations and have ever been so, though different methods of detail in the accomplishment of the final result have been in the past, and are now, practiced. The processes in general use to-day are more complex than in former years and a better result is attained, but the underlying principles are the same.

Defendant refines no molasses, the molasses obtained being merely a bye-product of the refining of sugar. (Rec. p. 23).

The value of the raw sugar is largely increased by the refining operations. The extended uses to which the refined product is put are detailed in the record and is matter of common and judicial knowledge.

Defendant had judgment in its favor in the Civil District Court, which judgment was reversed by the Supreme Court of Louisiana, and judgment was there rendered in favor of the plaintiff for the sum claimed with interest and attorney's fees, holding defendant not to be a manufacturer, and that the act under which the license tax was claimed was not unconstitutional.

Defendant sued out a writ of error to this Court, which was duly perfected.

THE ASSIGNMENT OF ERRORS

is as follows (Rec. p. 66):

1. The Supreme Court of Louisiana has erred in holding that the provisos of section nine of the Act of the General Assembly of Louisiana, by which planters are not subjected to the license tax imposed by that section, do not discriminate against the plaintiff in error, and thereby deny to it the equal protection of the laws secured to all persons by the fourteenth amendment of the Constitution of the United States.

2. Said Court erred in holding that the business of sugar refining conducted by the plaintiff in error was not the business of a manufacturer of sugar, and therefore exempt from the payment of license taxes.

3. Said Court erred in holding that the State was entitled to proceed by rule for the enforcement of the license taxes set forth in said rule.

The pertinent portions of the Louisiana Constitution, and of Act No. 150 of 1890, are as follows:

"ART. 206. The General Assembly may levy a license tax, and in such case shall graduate the amount of such tax to be collected from the persons pursuing the several trades, professions, vocations and callings. All persons, association of persons and corporations pursuing any trade, profession, business or calling may be rendered liable to such tax, except clerks, laborers, clergymen, school teachers, those engaged in mechanical, agricultural, horticultural and mining pursuits and *manufacturers*, other than those of distilled, alcoholic or malt liquors, tobacco, cigars and cotton seed oil. No political corporation shall impose a greater license tax than is imposed by the General Assembly for State purposes." *Constitution of Louisiana of 1879, Art. 206.*

Act No. 150 of 1890:

"AN ACT

"To levy, collect and enforce payment of an annual license tax upon all persons, associations of persons, or business firms and corporations, pursuing any trade, profession, vocation, calling or business, except those who are expressly excepted from such license tax by Articles 206 and 207 of the Constitution.

"*Section 1.* Be it enacted by the General Assembly of the State of Louisiana, That there is hereby levied an annual license tax for the year A. D. 1891, and for each subsequent year, upon each person, association of persons or business firms and corporations, pursuing any trade, profession, vocation, calling or business except those expressly exempt from such license tax by Articles 206 and 207 of the Constitution.

"*Sec. 2.* Be it further enacted, etc., That on the second day of January, A. D. 1891, and each subsequent year, each tax collector through the State shall begin to collect and shall collect as fast as possible from each of the persons or business firms, associations of persons and corporations pursuing within his district or parish any trade, profession, vocation, calling or business, a license tax as hereinafter graduated.

"All licenses shall be due and collectible during the first two (2) months of each year, and all unpaid licenses shall become delinquent on the first day of March of each year, and all firms who commence business after that date shall become delinquent unless the license is paid within ten days.

"*Sec. 3.* Be it further enacted, etc., That the annual license for all kinds of business hereinafter named, except as afterward provided, shall be graduated in twenty-five classes.

"MANUFACTURERS.

"*Paragraph 1.* That for carrying on each business of manufacturing not expressly exempted by Articles 206 and 207 of the Constitution, the license shall be based on gross annual receipts of said business as follows, to-wit:

"First Class (etc., etc.)

" * * * *

"Twenty-fifth Class (etc., etc.)

"*Provided*, nothing herein shall be construed to apply to the business of grinding meal, ginning cotton or making sugar by any farmer or planter.

* * * * * *

"*Sec. 9.* Be it further enacted, etc., That for carrying on each business of gaslight, electric light, water works, telegraphing, (including local and district telegraph), telephoning, express company, cotton compress or ginnery, cotton pickery, slaughter house, distilling and rectifying alcoholic or malt liquors, brewing ale, beer, porter or other malt liquors, manufacturing tobacco, cigars or cigarettes, refining sugar and molasses, manufacturing cotton seed oil, oil cake or cotton seed meal, the license shall be based on the gross annual receipts of each person, association of persons, business firm or corporation engaged in said business, as follows: provided, that this section shall not apply to planters and farmers grinding and refining their own sugar and molasses or ginning their own cotton or that of their tenants, or manufacturing their own cotton seed into meal, cake or oil, or work by machinery for plantation or farm purposes; provided, that no license shall be imposed or collected on cotton gins ginning for hire not over four hundred bales of cotton per annum; and provided further, that it shall not apply to those planters who granulate syrup for other planters during the the rolling season.

"First Class—When the said gross annual receipts are two million five hundred thousand dollars and over, the license shall be three thousand five hundred dollars ($3500)."

* * * * * *

Act No. 150 of 1890.

ARGUMENT ON THE MOTION TO DISMISS.

The motion to dismiss is grounded upon the contention that no necessary Federal question is involved in the suit.

This contention, we submit, is obviously without merit. If the Act No. 150 of 1890 be unconstitutional as set up in defendant's answer, the defense is complete, in whatever manner the other defenses may be disposed of.

The cases cited by counsel for defendant in error are those in which the defense, other than that based on a Federal question, is broad enough to support the decision of the State Court, however the Federal question involved may have been decided.

If the Act of the Louisiana Legislature in question be unconstitutional as claimed, it is a complete defense to the entire suit. A decision on the Federal question raised by the answer is absolutely necessary for a determination of the issues made.

There is, we submit, no ground for the motion to dismiss.

The motion to affirm involves a discussion of the constitutionality of the Act of the Louisiana Legislature, which is embraced in our argument upon the merits.

Argument on the Merits.

The issues embraced in this controversy are:

I. Is defendant's business of sugar refining a manufacturing business, or is it not?

II. Does the Act No. 150 of the General Assembly of Louisiana of 1890 contravene the Fourteenth Amendment to the Constitution of the United States?

I. Sugar Refining is Manufacturing.

Defendant's operations in the refining of sugar conform to the general practice, so that for the purposes of this dis-

cussion we may assume that the question at issue is whether the processes of refining sugar constitute a manufacture.

It is uncontradicted that defendant employs vast and varied machinery, with skilled and unskilled labor, and that the refining processes necessarily require many changes in the form and quality of the raw material used in producing the refined product. These several steps and the physical changes which the raw material undergoes have already been set forth at length, and are matters of common knowledge.

The argument is made against the contention of defendant that it is a manufacturer, that the refining processes are practically the same as a washing or scouring of the raw material whereby the dirt and impurities are removed. This contention has no foundation in fact.

In the first place, no washing can produce the result sought to be, and actually, accomplished. It is an undisputed fact, that in all refining processes, whatever the grade of raw sugar used, it is absolutely essential that the sugar be liquified by melting, purified in a liquid state and then recrystallized into sugar.

After being melted, the liquid is brought to the proper degree of density, a coagulant is introduced, filtration through the bag filters is had, then filtration through the bone-black filters; the liquid is then boiled in a vacuum, whereby an absolutely new grain, which had no prior existence, is formed, controlled as to size by the skill and design of the sugar boiler; the mass of grained sugar is then dried in the centrifugal machines, which separate the uncrystallized liquid from the grain; and the grained

sugar is then variously treated according to the particular kind of refined product desired, all as above set forth.

An absolutely new and different article, which did not before exist, has been produced. The various finished products have distinctive commercial names, and are fit for uses to which the raw sugar could not be put, and made more fit for those uses to which raw sugar might, in some sort, be put.

It is difficult to conceive how it can be seriously contended that the process of refining, starting with the liquid mass of melted sugar and ending with the beautifully white and chemically pure final products, is not a manufacturing process. The melting of the sugar is the indispensable first step—really a step backward, the step by which the beginning is reached—in all refining processes now, and from the earliest times; the liquified raw sugar is the raw material, which the refiner purifies by elaborate processes, and finally converts into the commercial article ready for use.

If the raw material were customarily procured by the refiner in a liquid state, there would be no question, we apprehend, but that the refiner, who buys the liquid sugar and turns out the refined product, is a manufacturer. How then is he the less a manufacturer when he buys the raw material in a state one step removed from a liquid, one step further away from the final product, and has to put it through the additional process of melting in order to reduce it to a proper form to begin the refining process upon?

It will not be denied that the making of raw sugar from the extracted juice of the cane or the beet is a manufac-

ture. If such juice were wholly freed of its impurities by processes similar to those used by defendant or otherwise, so that the first crystallization would be a refined product, such refined product also would unquestionably be a manufactured article.

If, instead of taking the cane-juice or beet-juice as the raw material to be purified and crystallized into sugar, the refiner begins his operations on liquid raw sugar as the raw material to be refined and crystallized, is he any the less a manufacturer than he who manufactures the sugar from the other liquid raw material—the juice of the cane or the beet?

If there is any difference between the two, it is only that the one may require more elaborate treatment than the other, as the percentage of sugar in the juice is less than in the melted raw sugar. But surely the processes detailed in the record are varied and extensive enough and the changes of form of the material used sufficiently great, to entitle the process as a whole to claim the dignity of a manufacture, even although other manufactures may require more varied processes and more elaborate appliances and machinery. Many manufactured products, as the authorities hereinafter cited show and as a matter of common knowledge, are produced with but slight changes of form of the raw material and with but little hand-labor or machinery.

To illustrate by analogy, the producer of steel is unquestionably a manufacturer. He may buy the pig-iron in a completely manufactured state, melt it, subject it to his particular steel-making process and obtain steel, his manufactured product. Or he may have his own blast furnace

and run the molten product of the blast furnace directly to his converter, without going through the intermediate, and to him unnecessary, step of producing the pigs. In either case, equally, he is a manufacturer of steel. The re-melting of the pig-iron in the first case is actually a backward step, but a necessary one, to get to the point of beginning the steel-making process.

So with sugar refining; it is as impossible to produce the refined product from the raw sugar, without the latter being liquified, purified in the liquid state and recrystallized into the final product, as it is to make steel from crude pig-iron without liquifying the iron and subjecting it in that state to the processes necessary to produce the steel. And the sugar refiner who produces the refined product from the liquified raw sugar, whether that raw material had ever before been crystallized or not, is as logically and as certainly a manufacturer as the producer of steel from the crude molten iron, whether that iron had ever before been crystallized into pigs or not.

We shall cite the authorities in support of defendant's contention that it is a manufacturer without further extended argument, relying upon: (1) The dictionary and judicial definitions; (2) Analogy to other industries held to be manufactures; and (3) The direct authority of popular, scientific, legislative and judicial interpretation.

(1) GENERAL DEFINITION.—Considered as a question of first impression, the definitions of "manufacture" given by the dictionaries and courts, in common understanding, include defendant's business.

MANUFACTURE is defined:

"The process of making anything by art, or of reducing materials into a form fit for use by the hand or machinery." *Worcester's Dictionary.*

"The production of articles for use from raw or prepared materials by giving these materials new forms, qualities, properties or combinations, whether by hand labor or by machinery; used more especially of production in a large way by machinery or by many hands working co-operatively." *Century Dictionary.*

"Anything made for use from raw or prepared materials." *Idem.*

MANUFACTORY.—"Any place where articles for use or consumption are regularly made." *Idem.*

"A manufacturer is not one who creates out of nothing, for that would surpass human power; neither is he one who produces a new article out of materials entirely raw. He is one who gives new shapes, new qualities, new combinations to matter which has already gone through some artificial process." *City vs. LeBlanc, 34 La. An. 597.*

"A manufacturer is defined to be one who is engaged in the business of working raw materials into wares suitable for use; who gives new shapes, new qualities, new combinations to matter, which has already gone through some artificial process." *City vs. Ernst, 35 La. An. 746.*

"The word 'manufacture' means the making of anything by hand or artifice. Railroad Co. vs. Fulgham, 91 Ala. 555; 8 South. Rep. 803. Mr. Worcester's Dictionary defines 'manufacture' as 'the process of making anything by art, or of reducing materials into a form fit for use by the hand or by machinery.' The definition that the word is given by the Century Dictionary is as follows: 'The production of articles for use from raw or prepared materials by giving these materials new forms, qualities, properties, or combinations, whether by hand labor or by machinery.' According to the above definitions of the word 'manufacture,' we are constrained to consider and declare an electric light company a manufacturing corporation to all intents and purposes. It is no answer to this argument to say that electricity exists in a state of nature, and that a corpora-

tion engaged in the electric light business collects or gathers such electricity. This does not fully or exactly express the process by which such corporations are able to make, sell and deliver something useful and valuable. The electricity that exists in nature is of a very different quality from that produced by means of machinery. The business in which an electric light company is engaged makes it necessary to invest large capital in the plant; and there is purchased and consumed coal and other materials to produce steam in order to furnish the power for the operation of the machinery. Then there is supplied and operated a complicated system of machinery, like that commonly used in manufacturing establishments, such as boilers, engines, dynamos, shaftings, beltings, etc., and then, by means of wires, cables and lamps, the mysterious power generated by the machinery used from the materials furnished is transmitted, and lights the streets and private houses. But the electric currents that produce these results cannot be said to be 'the free gifts of nature, gathered from the air or the clouds.' It is the product of capital and labor, and in this respect cannot be distinguished from ordinary manufacturing operations." *Beggs vs. Edison Electric Light Co., 96 Ala. 295.*

"If the question whether a corporation engaged in the business of furnishing electricity for lighting public and private places, or for power, is a manufacturing company, was made to depend upon the meaning of these words as found in dictionaries, or upon the technical language of science in describing electricity as a power, or as an agent in nature, it would doubtless be difficult, and perhaps impossible, to show that the process which relator calls 'manufacturing' produces anything that, in a certain sense, and in some form, did not exist before. That, however, is true of most if not all manufacturing operations. The application of labor and skill to materials that exist in the natural state gives to them a new quality or characteristic, and adapts them to new uses; and the process by which this result is brought about is called manufacturing, whether the change is accomplished by manual labor or by means

of machinery. But we think that these considerations are by no means conclusive in determining the true scope and meaning of the terms, 'manufacturing corporations,' as they are used in the statute.

"The true inquiry would seem to be whether a corporation organized as this is and carrying on the business that this does and in the manner shown, would not be considered in common language as engaged in some manufacturing process, or carrying on some manufacturing business, though granting all that is said by experts and others about electricity as a natural element of force." *People vs. Wemple, 129 N. Y. 553.*

"The primary meaning of the word 'manufacture' is something made by hand, as distinguished from a natural growth; but, as machinery has largely supplanted this primitive method, the word is now ordinarily used to denote an article upon the material of which labor has been expended to make the finished product. Ordinarily the article so manufactured takes a different form, or at least subserves a different purpose, from the original materials, and usually it is given a different name. Raw materials may be, and often are, subjected to successive processes of manufacture, each one of which is complete in itself, but several of which may be required to make the final product. Thus, logs are first manufactured to boards, planks, joists, scantlings, etc., and then by entirely different processes are fashioned into boxes, furniture, doors, windows, sashes, trimmings, and the thousand and one articles manufactured wholly or in part of wood. The steel spring of a watch is made ultimately from iron ore, but by a large number of processes or transformations, each successive step in which is a distinct process of manufacture, and for which the article so manufactured receives a different name." *Tide Water Oil Co. vs. U. S., 171 U. S. 216.*

Considering the extent and character of the machining processes employed by defendant, the number and variety of changes through which the raw material passes and the

qualities and forms of the finished product, and the uses for which fit, as compared with the raw material, we submit that, in common understanding, the business of defendant is a manufacturing business and none other.

(2) ANALOGY to other lines of business held to be manufacturers, establishes this also as one.

TOBACCO. The manufacture of tobacco furnishes a striking analogy. There is no question about chewing and smoking tobacco and snuff being manufactured articles. The U. S. Revised Statutes and the Louisiana Constitutions of 1879 (Art. 206), and 1898 (Art. 229), call them manufactures.

The process of manufacture converts the raw material—leaf tobacco—into the manufactured articles, by removing stems and dirt, improving the color, drying or moistening, perhaps sweetening some kinds, and compressing, granulating, fine-cutting or pulverizing, according to the use for which intended.

The parallel with sugar refining is complete. The substance of the manufactured tobacco is still tobacco, it is called by no new name, and is used for the same purposes as the leaf tobacco, though rendered more fit for those uses.

The process of manufacturing tobacco accomplishes the same result as the refining of sugar; though it is much simpler, requires less machinery and the raw material never loses its original identity; *a fortiori*, then is the refining of sugar a manufacture.

SAW MILLING—The cutting of rough lumber from logs

—is manufacturing. *State vs. A. Wilbert's Sons L. & S. Co., 51 La. An. 1223.*

Sawn lumber is still in substance wood and the logs may be put to the same uses as the lumber, though not as fit, therefor. Weather boards, flooring, etc., are in turn manufactured articles (see cases cited in *Wilbert's case, supra*); they are manufactured from the rough lumber, their substance is still wood, and they are put to no uses to which the rough lumber could not be put, though made more fit for such uses.

DYEING AND BLEACHING OF CLOTH is manufacturing. *Johnson vs. Somerville Dyeing and Bleaching Co., 15 Gray (Mass.) 216 (218).*

SALT. The production of salt, by process of evaporation, is a manufacture. *East Saginaw Salt Mfg. Co. vs. East Saginaw, 13 Wall. 376; Salt Co. of Onondaga vs. Wilkinson, No. 12,269 Federal Cases; Central Ohio Salt Co. vs. Guthrie, 35 Ohio St. 666.*

KINDLING WOOD. The splitting, drying and bundling of kindling wood is a manufacture. *People, Standard Wood Co. vs. Roberts, 47 N. Y. Supp. 122.*

OIL REFINING is a manufacturing process.

"Among the purposes for which the defendants incorporated themselves were 'refining oil, coal and other minerals and preparing them for use.' They were therefore strictly a manufacturing corporation." *Hawes vs. Anglo-Saxon Petroleum Co. 101 Mass. 385 (396).*

PORK-PACKING is manufacturing.

Engle vs. Sohn, 41 Ohio St. 691; 52 Am. Rep. 103.

STAVES, rough split by hand, are manufactured articles. *United States vs. Hathaway, 4 Wall. 404 (408).*

SPLIT TIMBER, to be used in making shovel handles, is

a manufactured product. *United States vs. Quimby, 4 Wall. 408.*

RICE MILLERS who simply hull, clean and polish rice are manufacturers. *City of New Orleans vs. Ernst, 35 An. 746.*

Other analogies, more or less complete, probably exist. We believe that we have cited sufficient to fix the character of defendant's business as a manufacture.

(3) AUTHORITY—Popular and scientific, legislative and judicial—establishes sugar refining as a manufacture.

POPULAR AND SCIENTIFIC AUTHORITY:

"SUGAR REFINING. * * * At present it is an important branch of *manufacture* in most of the principal commercial cities of the United States and Europe." *American Encyclopædia, Vol. XV, p. 446 (Appleton, 1876).*

"The *manufacture* of loaf-sugar is chiefly carried on in London; of crystals, in Bristol and Manchester; of crushed sugar, in Liverpool, Greenock and Glasgow." *Ure's Dic'y of Arts, Manufactures and Mines (London, 1878), Vol. III, p. 943.*

"*Manufacture of Crystals.* The use of centrifugal action for the separation of liquids and solids has been adopted in the arts for many years; * *" *Id. p. 948.*

"*Crushed Sugar.* This process closely resembles the *manufacture* of loaf-sugar, but the raw sugar used is generally of an inferior quality." *Id. p. 948.*

"*Manufactures of United Kingdom exported.* Refined sugar and candy, 1,119,542 cwt." *Id. Vol. IV, (sup.) p. 847.*

"The Refining of sugar is the leading *manufacture* in the City of New York. No other employs so much capital, or yields so large a product. * *" *Bishop's History of American Manufactures (1868), Vol. III, p. 150; and Vol. II, p. 593.*

"Refined sugar and chocolate were among the extensive

and prosperous domestic *manufactures.*" *Id. Vol. II, p. 41.*

"ANNALS OF MANUFACTURES. * * * The quantity of refined sugar sent out of the refineries during the year (1800) was 3,349,896 pounds, and the gross amount of duties thereon was $66,998." *Id. Vol. II, p. 83.*

"The *manufacture* of Refined Sugar in the Eastern and Middle States kept pace with the increase of population. * * *" (as to year 1816). *Id. Vol. II, p. 220.*

"KENTUCKY FACTORIES. A large Sugar Refinery was put in operation in May (1813), at Louisville, Ky." *Id. Vol. II, p. 247.*

Sugar refining is classified as one of the *manufactures* of New York and Brooklyn. *Id. Vol. II, p. 585.*

"Looking at the manufacture of sugar in a broad way, it may be said to divide itself first into the production of crude sugar from the cane and from beet, the materials alone employed upon the largest scale and treated by methods careful and economical enough to deserve consideration as scientific industries, while these methods necessarily differ with the different character of the two materials. Then, as a large proportion of the crude sugar so obtained is, in other hands, and often in other countries, carried through an elaborate process of purification, *sugar refining becomes a distinct branch of the manufacture*, as in a comparatively simple way it has been from time immemorial in India, practiced there by one caste receiving the supply of 'goor,' or crude, moist sugar from another." *U. S. International Exhibition, 1876, Vol. IV,—Reports and Awards,—pp. 18-19 (Report of Dr. J. W. Mallet).*

"Refined *manufactured* from raw sugar." (Statistics). *Id. p. 82.*

"The sugar so made (*i. e.* loaf sugar) is almost absolutely pure; as a rule there is not more than 0.1 to 0.3 per cent. of impurity (including moisture) in it, and whether the raw sugar used in its *manufacture* be 'beet' or 'cane,' it is

equally pure." *British Manufacturing Industries* (*Bevan, 1876*), *p. 128.*

The Factory Returns of Great Britain and Ireland classify sugar refineries as *factories. Id.* "*Industrial Classes and Industrial Statistics,*" *p. 196.*

Lock & Newlands, in their elaborate treatise, "*Sugar, a Handbook for Planters and Refiners,*" (*London, 1888*), *at pp. 611 and 654,* designate sugar refining as a *manufacture.*

"The immediate product of the first boiling of the cane juice is known as gurh or rab, according as the sugar is boiled down to a hard mass, or allowed to remain in a semi-liquid condition. Both gurh and rab contain some uncrystalized syrup. Gurh as a rule is intended for home consumption, and is comparatively seldom used in the *manufacture* of refined sugar." (Sketch of early refining in India). *Johnson's Universal Cyclopædia, Vol. VII, tit. Sugar, p. 807.*

"*Manufacture* of Refined Sugar." (Title of article describing process of refining raw sugars). *Tomlinson's Cyclopædia of Useful Arts and Manufactures, Vol. II, p. 785.*

"The improvements introduced into the processes of sugar refining allow loaf sugar to be now sold at a price so little exceeding that of raw sugar, that the *manufacture* has lately vastly increased." *Knight's Cyclopædia of Industry, p. 1628.*

"A considerable quantity of the imports (*i. e.,* of raw sugar) is converted into refined sugar, a *manufacture* which forms an important branch of industry in Britain; * * *" *Waterston's Cyclopædia of Commerce, p. 639.*

"Ninety establishments are especially engaged in refining the first product extracted from beetroot, or from the sugar cane; about 180,000 tons of raw sugar are received annually from the colonies, French and foreign, by these refining establishments, which employ 3400 workers. The yearly value of the *manufacture* amounts to 140 millions of francs." *Enc. Brit.* "*France,*" *Vol. IX, p. 521* (*9th Ed.*)

"But to return to the subject of sugar refining.

"In commencing the study of this *manufacturing* operation, it will be useful to consider the theoretical indications to be followed out." *Debow's Review* (*Reprint, 1856*), "*The Southern States*"—*Sugar, p. 239.*

"Instead of the deep charcoal cistern, some *manufacturers* employ shallow tanks of iron or lead." *Id., p. 241.*

If, instead of loaves, the *manufacturer* desired to obtain the material known as crushed lump, the contents of the moulds would never be stoved at all." * * * *Id., p. 246.*

"There is a considerable affectation prevalent among refiners of considering their *manufacture* absolutely perfect." *Id., p. 247.*

"The largest single *manufacturing* industry in New Orleans is that of sugar refining. * * * The American Sugar Refining Company's plant in New Orleans is one of the largest *manufacturing* establishments in the country, and the third sugar refinery in size." *Rightor's History of New Orleans* (*1900*), *p. 528.*

THE *Eleventh Census* of the United States (1890) classifies sugar and molasses refining under the title, "*Manufacturing Industries,*" *Part 1, p. 108*, and elsewhere.

In the same (ELEVENTH CENSUS, 1890), *Part II of Manufacturing Industries, p. XXXVI*, "Sugar and Molasses Refining" is classified as the principal *manufacturing* industry, by gross value of product, in the several cities of Philadelphia, Brooklyn, San Francisco and New Orleans.

LEGISLATIVE AND JUDICIAL INTERPRETATION bear out the conclusion that sugar refining is a manufacture.

Coxe vs. Pennington (*1 Wash. C. C. 65*), *No. 3,311, Federal Cases:*

WASHINGTON, Circuit Justice, says: "The question then is, whether upon refined sugars, not sent out of the house where they were *manufactured*, on or before the 3d of June, the duties had accrued and then remained outstanding? * * * The sugar refiner is to report his house and the implements employed in his *manufactory.*"

Pennington vs. Coxe, 2 Cranch, 33:

"Sugar refined but not sold and sent out of the *manufactory* before the 1st of July, 1802, is not liable to any duty upon being sent out after that day." *p. 33.*

"This was a feigned issue between Tench Coxe, a citizen of the State of Pennsylvania, and Edward Pennington, a citizen of the State of New York, to try the question, whether sugar actually refined, but not sold and sent out of the *manufactory*, before the 1st of July, 1802, is liable to any duty to the United States upon being sent out after that day." *Id. p. 33.*

This case involved consideration of the effect of the Act of Congress of April 6, 1802, repealing the internal revenue duty on refined sugar imposed by Act of June 5th, 1794.

CHIEF JUSTICE MARSHALL delivered the opinion of the Court, saying in part:

"* * * The fifth section (*i. e.* of the Act of June 5, 1794), after making several regulations requiring the refiner of sugars to report the building and utensils to be employed in the *manufacture*, * * * proceeds to enact that he shall," etc. *Id. p. 51.*

And again: "The object of the act imposing the duty being revenue, and not to discourage *manufactures*, it is reasonable to suppose that the attention of the Legislature would be devoted to the article in that state in which it was designed to be productive of revenue." *Id. p. 54.*

Again: "If A becomes the debtor by the mere act of refining, then he remains the debtor until he shall be legally discharged. Suppose him to part with his *manufactory* and his capital stock, there being at the time of transfer a quantity of refined sugars in the building, which pass with it to the purchaser." *Id. p. 56.*

Again: "With respect to the refiners of sugars, then, it must, on an inspection of the act, emphatically be said that the Legislature designed him to collect the duty from the consumer, but never to pay it from the *manufacture;* that

the tax should infallibly be imposed on expense, and never on labor." *Id. p. 62.*

Again: "The refiner, who is, in a different place, the retailer of sugar, must be considered as selling them from the *manufactory*, when he sends them out of it to his retail store." *Id. p. 63.*

Act of June 5, 1794 (1 U. S. Stat. 384 et seq.):

"An act laying certain duties upon snuff and refined sugar.

"Sec. 7. And be it further enacted, That every *refiner of sugar* shall make oath * * * that the accounts, which have been by him or her rendered, or the quantities of *refined sugar* by him or her sent out of the house or building, where the same shall have been *manufactured*, or procured, or caused so to be sent out, have been just and true."

"Sec. 10. And be it further enacted, That all snuff and refined sugar, which shall have been *manufactured* or made within the United States in manner aforesaid, shall," etc., etc. (be seized if tax not paid).

"Sec. 14. And be it further enacted, That from and after the thirtieth day of September next, no drawback of the duties upon any *manufactured* tobacco or snuff or *refined sugar*, which shall have been imported into the United States, * * * shall be allowed. * * * *"

"Sec. 20. And be it further enacted, That it shall be lawful to export, directly from any *manufactory* of snuff or *of refined sugar* to any foreign port or place, any snuff or *refined sugar* which shall have been *manufactured* at such *manufactory*, after the 30th day of September next, free from duty. * * * *"

Act of July 24, 1813. (3 U. S. Stat. 35):

"An act laying duties on sugar refined within the United States."

"Sec. 3. (Same as Sec. 7 of Act of June 5, 1794, above quoted)."

"Sec. 6. And be it further enacted, That all *refined sugar*, which shall have been *manufactured* or made within the

United States, etc." (shall be seized under certain conditions).

Act of Aug. 30, 1842. (5 U. S. Stat. 563):

"Sec. 14. And be it further enacted, That on and after the day this law goes into effect, there shall be allowed a drawback on *foreign sugar refined* in the United States, and exported therefrom, equal in amount to the duty paid on foreign sugar from which it shall be *manufactured*, to be ascertained," etc., etc. (under regulations to be prescribed).

Act of March 3, 1863. (12 U. S. Stat. 716):

"*Sugar refiners* shall pay one and one-half of one per cent. on the gross amount of the sales of all the products of their *manufactories.* * * *"

Referring to the proviso of St. Mch. 3, 1875, ch. 127, Sec. 3 (18 U. S. Stat. 339), which amends Sec. 3019 U. S. Revised Statutes, *Gould and Tucker* in their *Notes on the Revised Statutes*, say (Vol. 1, p. 636) :

"The proviso applies to all refined sugars *manufactured* from imported sugars, notwithstanding the other provisions of the chapter in which it is found."

14 Opin. Atty. Gen. 578 (Geo. H. Williams, Atty. Gen.) :

"Drawback on Refined Sugars."

"Thus construed, that proviso unquestionably applies to all refined sugars *manufactured* from imported sugars, irrespective of the other provisions contained in said Act of March 3, 1875." *p. 578.*

This opinion was in answer to the following from the Secretary of the Treasury :

"Does the increase in the amount to be retained from the drawback allowance on refined sugars, enacted by Section 3 of the Act of March 3, 1875, apply to all exportations of refined sugars *manufactured* from imported sugars, when such exportations are made subsequently to the passage of the Act, or only to exportations of refined sugars *manufactured* from crude sugars paying the increased rate of duty prescribed by the Act itself ?" *Id. p. 578.*

The Attorney General reached the conclusion that the proviso applied to all refined sugars exported, saying in conclusion:

"It (*i. e.* the proviso) is an amendment of Section 3019 of the Revised Statutes, and must be construed in connection with that Section, and not in connection with the Act of March 3, 1875; and, so construed, it operates as an exception or proviso in the former statute, and the two, in effect, enact that ten per centum on the amount of all drawbacks allowed by the Statute shall be retained for the use of the United States, provided that of the drawback on refined sugars only one per centum of the amount so allowed shall be retained. So construed, there can be no question that the provision applies to all refined sugars *manufactured* from imported sugars, without reference to the Act of 1875." *Id. p. 580.*

People vs. The North River Sugar Refining Co., 54 Hun (N. Y.) 354:

"A *manufacturing* corporation which with other corporations and individuals, enters into, and gives control of the business to a trust association * * * will be dissolved. * * *" *p. 354.*

"In an action brought by the State to vacate the charter of a *manufacturing* corporation, organized under the general manufacturing act (chap. 40 of the laws of 1848), it appeared that the corporation, while engaged in the business of refining and selling sugar, syrups and molasses, entered into a combination with certain other corporations and individuals engaged in the like *manufacture.* * * *" *Id. p. 354.*

"The judgment from which this appeal has been brought dissolved the defendant as a corporation previously formed and existing under the laws of this State. It was organized under chapter 40 of the laws of 1848 as a *manufacturing* corporation and its business was generally that of refining and selling sugar, syrup and molasses. It was incorporated for this object in February, 1865, and continued to

carry on the business until the close of the year 1887. Before that time, but in that year, a plan was formed and adopted for the formation of what was called the Sugar Refineries Company, to go into effect on the 1st of October, 1887. Its general object was to bring together the parties and corporations engaged in the *manufacture*, refining and sale of sugar. * * *" *Id. pp. 356, 357.*

The Court uses the term *"manufacturers"* in reference to the above business (*Id. p. 384*), and the expressions *"manufacture* of refined sugar" (*Id. p. 385*), and "Usefulness as a *manufacturing* competitor" (*Id. p. 385*); and further says:

"Instead of *manufacturing* its product and disposing of it to the public on what might be fair competitive prices, it had become a party to a combination, in part, at least, designed to create a monopoly, and exact from the public prices which could not otherwise be obtained." *Id. p. 386.*

In *United States vs. E. C. Knight Co., 156 U. S. 1*, we find:

"The American Sugar Refining Company, a corporation existing under the laws of the State of New Jersey, being in control of a large majority of the *manufactories of refined sugar* in the United States, acquired, through the purchase of stock in four Philadelphia refineries, such disposition over those *manufactories* throughout the United States as gave it a practical monopoly of the business. *Held*, that the result of the transaction was the creation of a monopoly in the *manufacture* of a necessary of life, which could not be suppressed under the provisions of the Act of July 2d, 1890."

CHIEF JUSTICE FULLER delivered the opinion of the Court, and, from the opinion, we extract the following:

"By the purchase of the stock of the four Philadelphia refineries with shares of its own stock, The American Sugar Refining Company acquired nearly complete control of the *manufacture of refined sugar* within the United States." *Id. p. 9.*

"The fundamental question is, whether, conceding that the existence of a monopoly in *manufacture* is established, the monopoly can be directly suppressed under the Act of Congress in the mode attempted by this bill." *Id. p. 11.*

"The argument is that the power to control the *manufacture of refined sugar* is a monopoly over a necessary of life. * * *" *Id. p. 12.*

"The object was manifestly private gain in the *manufacture* of the commodity, but not through the control of interstate or foreign commerce." *Id. p. 17.*

And in numerous other places the Chief Justice refers to the business as being a manufacturing business.

MR. JUSTICE HARLAN dissented in the *Knight* case, and, in the course of his dissent, said:

"In its consideration of the important constitutional question presented, this Court assumes on the record before us that the result of the transaction disclosed by the pleadings and proof was the creation of a monopoly in the *manufacture* of a necessary of life." *Id. p. 18.*

"It has been argued that the combination between corporations of different States, or between the stockholders of such corporation, which the object and effect of controlling not simply the *manufacture* but the price of refined sugar through the whole of the United States—which is the case now before us—cannot be held to be in restraint of 'commerce among the States' and amenable to national authority, without conceding that the general government has authority to say what shall and what shall not be *manufactured* in the several states." *Id. p. 33.*

In other portions of his dissent Justice Harlan repeatedly uses the word "manufacture" in reference to the business under consideration; it is unnecessary to quote at length. The quotations above amply show that this Court accepted without question the conclusion that the business was a manufacturing business, and it is to be observed that the

case actually hinged upon the fact that sugar refining was a manufacturing business.

In subsequent judicial references to the above decision, in *United States vs. Trans-Missouri Freight Association, 166 U. S. 290 (326); United States vs. Addyston Pipe and Steel Co., 78 Fed. 712 (721);* in same, *85 Fed. 271 (296, 297), (54 U. S. App.);* and in *Addyston P. & S. Co. vs. United States, 175 U. S. 211 (238-240),* repeated use has been made of the words "manufacturer" and "manufacture" in reference to the sugar refiner and his product.

Like use of the expression is made by Prof. E. W. Huffcut in his recent article, "Federal Control of Corporations:"

"As was held in the Knight case (156 U. S. 1), the anti-trust law does not extend to a combination for the *manufacture* of sugar, because manufacture is not trade or commerce. Congress, therefore, could not suppress a monopoly for the *manufacture* of sugar, because manufacture is not trade or commerce." *34 Am. Law Review, 191.*

Even Mr. William J. Bryan testifies—unwillingly perhaps—in support of the definition for which we contend. In his recent so-called Anti-Trust letter, published in the daily press, Mr. Bryan, in criticism of the President, says:

"He does not refer to the Sugar Trust case, which nullified the law of 1890 so far as manufacturing monopolies are concerned. In that case the Court drew a distinction between a monopoly in manufacture and a monopoly in interstate commerce, and held that the law did not prohibit a monopoly in manufacture. * * * The language used by the Court in condemnation of Federal interference with manufacturing conducted within a State is so strong that Justice Harlan assumes that the Court would hold unconstitutional any amendment of the present law aimed at

monopoly in manufacture." (N. O. Times-Democrat, Jan. 11, 1900).

In a resolution recently (Feb. 19, 1900) offered in the House of Representatives, the words "manufacture," "manufactured" and "manufacturer" are used no less than ten times in referring to the refining of sugar, the refined product and the refiner, respectively.

In *Union Sugar Refinery vs. Mathiesson et al., 3 Cliff. 639, Fed. Cas. No. 14,399*, the question was as to the infringement of a certain patent relating to the cleansing and purifying of sugar in the process of refining. Mr. Justice Clifford, in charging the jury, twice used the word "manufacture" to denote the process of refining sugar. (*24 Fed. Cas. pp. 693, 696*).

In considering a case which concerned the Louisiana Sugar Refining Company (which was succeeded by the present defendant), CHIEF JUSTICE BERMUDEZ, of the Supreme Court of Louisiana, said:

"The object of this suit is to annul the permission which the City of New Orleans has granted the defendant Company to lay water pipes from its *factory* to the Mississippi River, under municipal direction and control. * * *" *N. O. Waterworks Co. vs. The Louisiana Sugar Refinery Co. et al., 35 La. An. 1111.*

"The defense is that the defendant Company, in common with all other inhabitants, has an inalienable right to draw water from the river for their own use and supply; * * * that the defendant Company has not supplied, and does not intend to supply, the City or any inhabitant of the City of New Orleans, with water through its pipes, which are exclusively for its own use and for its *manufacturing* purposes." *Id. 1111.*

"In March, 1883, the City Council authorized the defendant Company to erect its *factory* and to lay water

and sewerage pipes therefrom to the river. * * *" *Id. 1112.*

"The City and the defendant Company claim only that the former had a right to grant, and the latter has that to enjoy, the permission of laying pipes and conduits from the river to its *factory*, for the sole purpose of supplying itself with river water for its own purposes, and for no other." *Id. 1114.*

"It cannot be doubted for an instant that * * * she (the City) had the right of permitting the defendant Company to lay pipes and conduits across the quay and through the streets, from the river to within its *factory* limits, for the purposes of supplying itself with the water needed for its objects." *Id. 1114.*

On writ of error to this Court, in the same case, MR. JUSTICE GRAY, delivering the opinion of the Court, said:

"The evidence supported all the allegations of fact in the petition, except that the acts of the Louisiana Sugar Refining Company, and the situation of its *factory* in relation to the river, were proved to be as follows: The Company was constructing a *factory* on its land bounded by Front, Clay, Bienville and Customhouse Streets, and had begun to lay water and sewerage pipes, exclusively for the use of its *factory*, and according to lines and grades furnished by the City Surveyor, from its *factory* straight to the river. * * *" *N. O. Waterworks Co. vs. Louisiana Sugar Refining Co., 125 U. S. 18 (22).*

"The Supreme Court of Louisiana * * * in its opinion * * * recapitulated * * * the ordinance, passed by the city council in 1883, granting to the Louisiana Sugar Refining Company authority to lay pipes from its *factory* to the Mississippi River. * * *" *Id. p. 23.*

"The only matter complained of by the plaintiff, as impairing the obligation of the contract contained in its charter, was an ordinance of the city council granting to the Louisiana Sugar Refining Company permission to lay pipes from the river to its *factory*. * *" *Id. p. 26.*

"The Louisiana Sugar Refining Company in its answer

alleged that its *factory* was contiguous to the river. * *" *Id. p. 27.*

"The evidence showed that the pipes of the defendant Company were being laid exclusively for the use of its *factory*. * * *" *Id. p. 27.*

"That opinion, as printed in 35 La. An. 1111, * * * shows that the grounds of the judgment were: that * * * the city was authorized to permit the defendant Company to lay pipes across the quay and through the streets from the river to its *factory*, for the purpose of supplying it with water for its own use." *Id. pp. 27, 28.*

"The only grounds on which the plaintiff in error attacks the judgment of the State Court are * * * in not adjudging that the ordinance of the city council, granting to the defendant Company permission to lay pipes from its *factory* to the river, was void because it impaired the obligation of that contract." *Id. p. 28.*

"The arguments at the bar were principally directed to the question whether, upon the facts proved, the *factory* of the defendant Company was contiguous to the river." *Id. p. 28.*

EXTRACT FROM CITY ORDINANCE OF NEW ORLEANS, adopted March 13th, 1883, and approved March 15th, 1883, set forth in above, (*125 U. S. 21*):

"Be it ordained that permission be, and is hereby, granted to the Louisiana Sugar Refining Company to erect all necessary machinery, boilers and engines in their *factory* in course of construction in the square bounded by Front, Clay, Bienville and Customhouse Streets, and to lay water and sewerage pipes from said *factory* to the Mississippi River. * * *"

ORDINANCE (CITY OF NEW ORLEANS) No. 4003, C. S., Sept. 24, 1889, approved Sept. 30, 1889:

"Be it ordained, That permission be and is hereby granted to the Louisiana Sugar Refining Company to erect all necessary machinery, 220 horse-power boilers, engines, etc., in their *manufactory*, now in course of construction in

the square, bounded by Customhouse, Wells, Crossman and Front streets. * * *"

Act No. 101 of 1890 (Louisiana):

"Making it a crime to maliciously destroy, injure or damage, or to attempt to destroy, injure or damage any sugar mill, cotton gin, rice mill, or any machineries or apparatus forming part of or attached to any manufactory in this State, and providing a punishment therefor.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That if any person shall wilfully and maliciously cut, break or destroy, or damage, with intent to destroy and render useless any engine, machinery, mill or apparatus, making part of or attached to *any sugar mill or refinery*, rice mill, cotton gin, press *or other factory*, the property of another, such person shall, on conviction, be imprisoned at hard labor, or otherwise, not exceeding two years, and fined not exceeding five hundred dollars, at the discretion of the Court."

Lastly, the CIVIL CODE of Louisiana, itself, if there were no other authority, would seem to settle the question beyond contention:

"Things which the owner of a tract of land has placed upon it for its service and improvement, are immovable by destination.

"Thus the following things are immovable by destination when they have been placed by the owner for the service and improvement of a tract of land, to-wit: * * *

"The utensils for working cotton and sawmills, taffia distilleries, *sugar refineries and other manufactures.*" *Revised Civil Code, Art. 468.*

The same provision occurs also in the Louisiana Civil Codes of 1808 and 1825.

The citations which we have furnished above show conclusively, we submit, that popular and scientific writers, legislators and judges, State and National, have all used

the word "manufacture" as including within it the process of sugar refining, and that they have not been able to express themselves concerning this process except by using the word "manufacture" to denote it. It is such use of words, and such use only, which forms definitions.

Such are the authorities. There is not a line nor a word to the contrary save the decision of the Louisiana Court in *State vs. American Sugar Refining Co., 51 La. An. 562* (Rec. pp. 42-62), which was decided without reference to the direct authorities above cited, but solely upon the Court's conception of the general definition and the pertinence of analogies cited by it.

The theory of that decision is that a sugar refiner is not a manufacturer, because his product is still sugar and is called by no new name. As to the latter the Court was clearly in error as to the facts, as the refined product has its distinctive commercial names—"Cube," "Granulated," "Powdered," "Confectioner's A"—each of which is distinctive from the other and from the raw material. If a member of that Court were to ask in a store for a "pound of sugar," he would scarcely get it without specifying the distinctive name of the article he wished. No more than he would get his tobacco, unless he specified the kind—fine-cut, granulated, plug-cut, or plug.

Is not manufactured tobacco still tobacco in material substance? Is it not still called tobacco with the addition of an adjective to denote the kind of manufactured product? Are not staves and rough lumber still wood? Are not shoes still leather, and stoves iron?

If it be contended that the cases and statutes cited,

although they use the terms "manufacture," "manufactured," "manufacturer," and "manufactory," in reference to the process, product, producer and establishment, respectively, are not of authoritative force, because the question of manufacture *vel non* was not presented, it may be answered that they assumed the conclusion as one which had never been and could not be controverted.

Furthermore, an exactly similar precedent was relied upon by Mr. Justice Watkins in *State vs. A. Wilbert's Sons L. & S. Co., 51 An. 1223*, when he says in support of the Court's conclusion, that a saw-mill is a manufactory: "But it is worthy of notice that in Improvement Co. vs. Browne, *supra* (45 An. 459), saw-mills and planing mills were mentioned specifically as 'manufactories.'"

In its opinion in this case, the Court said that defendant "is not a manufacturer *in the sense of* Article 206 of the Constitution of 1879." Necessarily it held defendant not to be a manufacturer in any sense. For if it be a manufacturer in any sense, it is exempt from license tax, as there is no room for limiting or restricting the language of the Constitution, nor was there any apparent purpose to do so. The Constitution exempts *all* manufacturers except those specially excepted.

As said in *Wilbert's case, 51 An. 1223 (1231)*: "Under the former (Art. 229 of the Constitution of 1898, identical with Art. 206 of the Constitution of 1879), *all* manufacturers *eo nomine*, and all persons engaged in mechanical pursuits, are exempted from license taxation, other than those excepted."

And in *Weckerling's case, 38 An. 37:* "We have heretofore held that the Constitution clearly exempts from license tax *all* manufacturers not excepted."

Also in *Washburn's case, 43 An. 226:* "It will be observed that *all* manufacturers are, in terms, excepted, unless they are included within the express reservation of that Article (206)."

So in the *Ernst case, 35 An. 746* (*747*):

"The Constitution clearly exempts *all* manufacturers not excepted. The excepted ones are: those who manufacture alcoholic or malt liquors, tobacco and cigars and cotton seed oil. As the defendants do not come within the exclusion, it is manifest that the license claimed cannot be recovered."

And in the *Sugar Co.'s case* itself, *51 An. 562* (*569*):

"Under the provisions of this Article (*i. e.* Art. 206 of Constitution of 1879), *any* manufacturer is exempted from license tax, unless he be a manufacturer of liquor, tobacco, cigars and cotton seed oil. Hence the answer claims the exemption granted to *all* manufacturers not included in the exceptions just mentioned." (Rec. p. 46).

The Court in fact considered the question as being whether or not defendant was a manufacturer in common understanding and found that "defendant is not a manufacturer, in the general and common acceptation of that term." *51 An. 586.* (Rec. p. 59).

It is plain, therefore, that all who are manufacturers, in the common and ordinary acceptation of the word, are exempt.

Can there be any doubt, upon the authorities cited, but that the business of sugar refining is a manufacturing business, not only in common understanding, but in scientific, legislative and judicial understanding as well?

The decision of the Supreme Court of Louisiana upon this point, was as to a definition of a word in common use,

in the vernacular language, and we respectfully submit that it was erroneous.

But it may be contended that the decision of the Louisiana Court was upon the interpretation or construction of the State Constitution, and therefore as binding upon this Court as the State Constitution itself.

We concede the law to be that the construction by a State Court of its own State Constitution becomes practically a part of the Constitution in the absence of any claim that the State Constitution so construed is obnoxious to any provision of the Federal Constitution.

In the present case, however, so far from any question of interpretation or construction of the State Constitution arising, both the plaintiff and defendant contended for exactly the same construction of the State Constitution, and the Court concurred in that construction.

The Act in question purports to levy a license tax upon sugar refiners. There is no question as to the interpretation of the Act. Both plaintiff and defendant agree that the Act means what it says. The State Court has left the Act exactly as it found it.

Art. 206 of the Louisiana Constitution of 1879 exempts all manufacturers from license taxation (except those therein specifically excepted). The plaintiff and defendant agree that the Constitution exempts *all* manufacturers, and the Court held that the Constitution exempts all who are manufacturers in the common and ordinary acceptation of that word. No question of the interpretation or construction of the State Constitution was presented or passed upon.

The question before the Court was purely one of defini-

tion: Is or is not a sugar refiner a manufacturer? It was not, and is not now, contended that the word *manufacturer* has any different meaning in the Louisiana Constitution from what it has in the vernacular language. There is no statute of the State of Louisiana defining or attempting to define the word. It is not claimed that the word has any peculiar meaning in Louisiana by reason of statute, local law or customary use, different from what it has throughout the country. The Supreme Court of Louisiana did not intimate that this word has any other meaning in the Constitution than that which it has in common use throughout the country. On the contrary, the Court distinctly say that the word is used in the Constitution in its common and ordinary meaning (Rec. p. 59). In reaching its conclusion on the definition of this word, the Court resorted to the authority of other jurisdictions and determined by general definition and analogy what, in its opinion, the true meaning of the word is, not only in Louisiana, but in the language of the country—not only as used in the Louisiana Constitution, but as commonly and generally used in all connections.

The question is therefore, we submit, one of general law and in no sense statutory. Whatever conclusion may be reached on this question of definition, is absolutely unaffected by any statute or local custom or use of the State of Louisiana and is equally as applicable in New York or California as it is in Louisiana. Should a similar question arise in a New York court, that court would resort to exactly the same sources for the determination of the question as did the Supreme Court of Louisiana, supposing, of course, that the State of New York has no statute giving a

statutory definition to the word different from the meaning which it has in the language of the country.

The fact that the question arose in the application of a tax statute of the State of Louisiana was purely accidental and had no bearing upon the determination of the true definition nor upon the sources from which the court sought its law. The question might just as well have arisen in any other connection, and its determination would have proceeded upon exactly the same lines and the law sought for from the same sources, it being conceded by the Court that the word was used in its common and ordinary acceptation and had no special or particular meaning peculiar to the law in which it happened to be found, or to Louisiana jurisprudence.

Illustrations may serve to point our argument.

Let us suppose the State of Louisiana to enact a statute declaring that all servants injured through the negligence of their fellow-servants shall have no recourse for damages against their employer, as is the rule of the common law. Let the question arise in the State Court as to whether, in a particular case, the injured servant and the negligent servant are or are not fellow-servants. Let us suppose that the court gives its definition to the word "fellow-servant" so as to hold that the parties are not fellow-servants. Such a decision would be upon a question of general law and in no sense the construction of a statute.

Now we concede that if a State statute should also undertake to define the word "fellow-servant," such statute would be binding upon the Federal Courts, and the interpretation by the State Court of such statute, being under the law practically a part of the statute, would be equally bind-

ing. But this question is not presented in the case at bar, as all parties, the Supreme Court of Louisiana included, agree that the word as used in the Constitution has only the meaning which it has in the vernacular language and has no peculiar meaning in Louisiana, by statute or otherwise, different from the meaning which it has elsewhere.

Again, let us suppose the statute law of Louisiana to provide that all "makers" of notes shall be bound without protest and notice. If the question should be presented to the Supreme Court of Louisiana as to whether one who has endorsed a note prior to negotiation be or be not a maker thereof, the Louisiana Court would decide, as it has decided, that such person is an endorser and not a maker, and is therefore entitled to protest and notice. Let the same question come before the Federal Court, and, although the application of the same statute be involved, the Federal Court will decide as a question of general law (as in *Phipps vs. Harding, 34 U. S. App. 48*), that such person so endorsing is a maker of the note and not an endorser.

We again concede that if the State statute undertook to define who shall be considered makers of notes and who endorsers, the State Court's interpretation of the State statute would become a part of the statute and be equally as binding as the statute itself. But, in the absence of any such defining statute, the question of definition is a question of general law.

To illustrate again—and we have been at pains to select an illustration which is in every respect parallel with the case at bar: Suppose that the Constitution of the State of Louisiana should provide that all *animals* shall be exempt from taxation, and that a statute should provide that

horses shall be taxed at their cash value. Let the question arise in the State Court as to whether A shall be taxed upon his horse, A claiming the benefit of the exemption granted by the Constitution. The State Court decides that a horse is not an animal and that A must be taxed for his horse. In so deciding, the Court concedes that the word "*animals*" as used in the State Constitution has the common and ordinary meaning given to that word; it does not contend that there is any peculiar meaning given to the word in Louisiana, by statute, custom or otherwise, different from the meaning which the word has in general use in the language of the country.

In the supposed case, the Louisiana Court has therefore decided as a matter of natural history that a horse is not an animal.

Let the same question be presented to this Court and the claim be made that the decision of the Louisiana Court in the supposed case is upon the construction of a statute. Will this Court take its natural history from the Supreme Court of Louisiana, or will it resort for itself to the common sources of information and determine the question? Has there been anything decided by the Supreme Court of Louisiana except a general question of natural history, which, if true in Louisiana, is true throughout the world? We conceive that no one will contend that this Court in such a case would be bound by the decision of the Louisiana Court, although the question of general law involved may have arisen in the application of a tax law of the State.

If, however, there were some statute of the State of Louisiana which established for Louisiana a peculiar statutory natural science different from that of our common

knowledge, and, under such a statute or its interpretation by the State Court, horses were held not to be animals, then this Court might find that in Louisiana, under such statute, horses are not animals. But, in the absence of any statute defining, or attempting to define, the word "animal," this Court will determine that horses are animals as a matter of common knowledge and general law.

If the question before the State Court had been the determination of which one of two or more possible meanings the Louisiana Constitution has, a question of interpretation would have been presented. For instance, if the question in the State Court had been as to whether the word "manufacturer" was used in the State Constitution in its primary sense as "a maker by hand," or in its derived sense as "a maker by hand or machinery," the decision of the State Court on this question would have been final, as the State Court is the peculiar organ for the interpretation of the State Constitution, and the choice of such meanings by the State Court would become practically a part of the Constitution. But in the actual case it was conceded by the Court that there was but one possible meaning fixed and definite to be given to the Constitution, and that meaning was declared to be that all who were manufacturers in the common and ordinary acceptation of the word are exempt from license taxation. We rest upon the undisputed interpretation of the State Court and ask for its application to the case which the record makes.

The Supreme Court of Louisiana held that only those are exempt who are manufacturers in the common and ordinary acceptation of the word; that a sugar refiner is not a manufacturer in the common and ordinary definition of the

word "manufacturer," and therefore that a sugar refiner is not exempt.

The proposition that *all* manufacturers are exempt might have involved the interpretation of the State Constitution; it is, however, agreed by both parties to this suit and by the Court, that all manufacturers are exempt, except those specifically excepted.

The proposition that a sugar refiner is not a manufacturer is a mixed question of law and fact; the facts being undisputed, it becomes a pure proposition of general law, a question of definition. If sugar refiners are manufacturers, they are manufacturers in the State of Louisiana as well as elsewhere. There is no law or statute defining manufacturers in this State, and the Court did not seek to apply any statute in this connection.

We submit, therefore, that in the determination of the question which is presented, the Louisiana Court decided a general question of law, and that it was in no sense a decision on a statutory or a local question. Whatever conclusion is proper in this case is proper in all like cases, in all jurisdictions, in the absence of statutory definition.

II. THE ACT NO. 150 OF THE GENERAL ASSEMBLY OF LOUISIANA OF 1890 IS IN CONFLICT WITH THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, IN THAT IT SEEKS TO CREATE AN ILLEGAL DISCRIMINATION AGAINST SUGAR REFINERS WHO ARE NOT PLANTERS.

The second defense is that the attempted exemption of planters and farmers in the proviso to *Section 9 of Act 150 of 1890* creates a discrimination against defendant which is unconstitutional, as being in conflict with the First

Section of the Fourteenth Article of Amendment to the U. S. Constitution, which provides that no State shall "deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The argument on this branch of the case necessarily assumes throughout that defendant has been found by the Court not to be a manufacturer.

Act No. 150, Section 9, imposes a license tax "on each business of gaslight, * * * refining sugar and molasses, or either of them, * * * as follows: Provided, that this section shall not apply to planters and farmers grinding and refining their own sugar and molasses; * * * and provided further, that it shall not apply to those planters who granulate syrup for other planters during the rolling season."

The Supreme Court of Louisiana in this case, *51 An. 566*, (Rec. pp. 44, 45) held that the proviso to the Act No. 150 of 1890 was not in conflict with the first section of the Fourteenth Amendment, and did not deprive the defendant of the equal protection of the laws.

It is to be remarked that in so deciding the Court did not in any manner touch the point which was actually raised by the answer and presented for adjudication, the decision being based upon a consideration of the proviso to Section 3 of Act No. 150, which had no bearing upon the question at issue, was not pleaded and is different in terms and meaning from the proviso to Section 9, which was the proviso pleaded as being unconstitutional.

The effect of this confusion by the Court of the two provisos is obvious. It invested the proviso to Section 9, which was pleaded as containing the unconstitutional discrimina-

tion, with a meaning which its terms do not give it, by reading into it the words of the proviso to Section 3.

The question of unconstitutionality is, therefore, presented to this Court as a new one. The decision of the State Court, as shown, is not even persuasive authority.

It will be seen that the provisos to Sections 3 and 9 of Act 150 of 1890 are entirely different. The latter allows the exemption to planters or farmers "refining their own sugar." The defendant refines only its own sugars. Hence the basis of classification is, whether the refiner be a planter or be not a planter. The subject matter with reference to which the classification is made is the same in both cases—*i. e.* the refining of one's own sugar.

It is not contended that the State of Louisiana may not favor planters as such over those engaged in other occupations. It is the policy of the State to foster agriculture. Planters are exempted from license taxation while merchants, physicians and lawyers are taxed. The basis of such a classification is reasonable and a proper exercise of legislative power; the whole of one class is included in the exemption and the whole of the other classes are excluded.

But whenever the State undertakes to favor the planter in other occupations than planting, solely because he is a planter, then the attempted classification is arbitrary and becomes obnoxious to the Fourteenth Amendment. The law may discriminate in favor of, and foster and protect, a particular occupation, but must not foster and protect a particular person or class of persons, save with respect to the favored occupation.

If it were the policy of the State to foster the sugar re-

fining business, the State could specifically exempt all sugar refiners from license taxation. But it cannot arbitrarily exempt all sugar refiners who are not planters any more than it can exempt all sugar refiners who are planters.

The classification of sugar refiners into the two subclasses of planters and non-planters is therefore, we submit, purely arbitrary and unreasonable. A planter as such can have no greater rights or exemptions, with reference to other things than his planting operations, than any other person within the jurisdiction of the State: and, if any law of the State attempts to give him more rights and exemptions than it gives to others with regard to the same subject matter, that law exceeds the limitations imposed by the Fourteenth Amendment.

The law is plain that the equal protection guaranteed by the Constitution forbids unequal exactions of any kind, including unequal taxation, and the fact seems equally plain that the Act in question does impose unequal and arbitrary taxation upon all sugar refiners who do not happen to be planters as well.

Class legislation is not in itself unconstitutional. The recognized test of its constitutionality is that a reasonable classification be made and that the whole class of persons subjected to it be treated alike. Apply the test to this law. The class subject to the law are sugar refiners. If it treats all sugar refiners alike, the law is constitutional; if not, then it is unconstitutional. Upon its face, the law in question does not stand the test; it seeks to favor a particular class of sugar refiners, arbitrarily selected, and is therefore void.

The planter who is also a sugar refiner is so because he

manufactures refined sugar from raw sugar. Hence, if such planter is a manufacturer of refined sugar for having refined raw sugars, so defendant is likewise of necessity a manufacturer for having done the same thing.

The proviso to Section 9 (Act 150 of 1890) seeks to exempt the planter from payment of license tax for his refining operations, while imposing a tax upon other refiners for exactly similar operations, which is a denial of the equal protection of the laws and obnoxious to the Fourteenth Amendment.

The law deals with the same subject matter, raw sugars and sugar refiners, in the cases of both the taxed and the exempted refiner. It makes no difference that there may exist a possible difference in the amount of sugars refined.

If the law should read that all sugar refiners shall be exempt except those who are planters, would there be any doubt about its unconstitutionality? Yet the law as it stands is exactly that, *mutatis mutandis*.

A State may make distinctions between classes of persons in its taxation laws, and, to that extent, may discriminate. But the absolute condition of such classification, we submit, is that it shall be based on a reasonable basis and shall apply to the whole of the class affected and not merely to a part. Thus, the State may, as many States do, exempt farmers from license taxation and tax lawyers and physicians, but it is essential to the validity of any such exemption that all farmers shall be equally exempt and all lawyers and all physicians be liable, in such graded classes as may be prescribed. Otherwise, the law would deny to some of the particular class of persons the equal protection of the laws.

Applying this to the law in question, we find that the law purports to tax all sugar refiners as a class and then excepts some of the particular class, to-wit., those who happen to be planters also. This distinction is absolutely without any reasonable basis. The law might as well attempt to tax all lawyers for carrying on their profession and add a proviso that lawyers who are planters as well shall be exempt from the operation of the law.

Nor can it be said that the refining of sugar by a planter is in any sense an incident of his agricultural pursuit. Sugar refining is a separate and distinct business, whether it be a manufacturing business or not. It is carried on customarily at distances more or less great from the place where the raw sugar is produced and it is a matter of judicial knowledge (supported by the authorities herein cited) that an enormous amount of capital is invested in the industry and that the gross value of the product is one of the greatest in this country.

The cotton planter who raises his own cotton and owns a cotton mill also, in which he makes the cotton cloth from the cotton grown by him, is neither more nor less a manufacturer of cotton goods than he who buys the cotton and uses it in his mills.

The manufacturer of stoves may be also a furnace owner and make his own pig iron, but he is, nevertheless, a manufacturer of stoves, notwithstanding he has, himself, produced the raw material from which the stoves are manufactured. He is neither more nor less a manufacturer of stoves than his competitor who owns no furnace and buys his pig iron.

So, the planter who carries on the business of planting

and also carries on the separate business of refining, is neither more nor less a sugar refiner because he happens to be also a sugar planter. He is just as much a sugar refiner as he who buys the raw product and then conducts the process of refining. Both apply their skill, capital, labor and processes to the same thing—raw sugar.

It seems clear to us, therefore, and we respectfully submit, that the law in question, whether the words used in the exemption of planters—"their own sugar and molasses" —be understood as meaning what the plain words import, or being understood as meaning sugar and molasses actually produced by the planter, in either case equally a distinction is made in favor of such planters, not as regards their planting operations, but as regards the separate business of sugar refining, which discriminates in their favor and against all other sugar refiners, with reference to the same subject matter, and is unconstitutional.

The case of *Railroad Co. vs. Ellis, 169 U. S. 150*, is directly applicable. The Texas statute considered in that case sought to make a discrimination against a particular class of debtors, to-wit: railroad companies, by allowing an attorney's fee to be taxed as costs in a certain class of cases. This Court held that the discrimination was unconstitutional, in that it did not apply to all debtors and sought to place a burden upon a particular class of debtors without any just basis of discrimination. Other pertinent authorities are cited and reviewed in the above case, which it is unnecessary to cite at length.

It is unquestioned that the State may make laws which bear peculiarly upon certain classes of persons and particularly upon those who owe public duties to the State,

in the exercise of its police powers. But such laws must bear equally upon all persons subject to them, and must be based upon some reasonable ground of discrimination bearing a just relation to the subject matter of the law.

The State may select its objects of taxation, but having selected, must tax all of the selected class. If it tax sugar refiners, it must tax all sugar refiners in graded classes.

R. R. Co. vs. Walker, 47 Fed. Rep. 681, is directly in point. The State of North Dakota had selected lands as an object of taxation. It provided a different mode for taxing lands of Railroad Companies from that applicable to other lands. Judge Caldwell, in holding the law unconstitutional, said:

"Property of the same kind, in the same condition, and used for the same purpose, must be taxed by a uniform rule without regard to its ownership. The legislature having selected land as a subject of taxation, all lands under the same conditions are subject to be taxed. The law for the taxation of lands must operate equally und uniformly upon all lands, the condition and use of which are similar. While property may be classified for the purpose of taxation, between the subjects of taxation of the same class there must be equality. Property of the same kind, and in the same condition, and used for the same purpose, cannot be divided into different classes for purposes of taxation, and taxed by a different rule, because it belongs to different owners. But this is precisely what the act under consideration seeks to do. It exempts the lands of the company from taxation simply and solely because they belong to the company, and taxes all other lands by a uniform rule according to their value. It was not competent for the legislature either under the organic act or the fourteenth amendment of the Constitution of the United States, to classify the lands in the territory, for purposes of taxation, into lands owned by railroad companies and lands owned

by all other persons, and declare that the former should not and the latter should be taxed." *p. 686.*

The above language is in the main approved by this Court in *McHenry vs. Alford, 168 U. S. 666,* though the conclusion on the whole case is different.

In re Grice, 79 Fed. Rep. 627, is also in point. This case involved consideration of the constitutionality of the Texas Anti-Trust of 1889. One clause of the act exempted from its operation agricultural products and live-stock in the hands of the producer or raiser. This was held by Judge Swayne to be unconstitutional class legislation, in that it made a discrimination in favor of the favored trust without any just basis. The decision is lengthy and contains expressions peculiarly applicable to the instant case, especially on pages 645, 646, 647, 648 and 649, to which we respectfully refer. Upon writ of error to this Court, the judgment was reversed on a point of practice only. (*169 U. S. 284*).

Union Sewer Pipe Co. vs. Connelly, 99 Fed. 354, involved practically the same point in the Illinois Anti-Trust statute. Judge Kohlsaat held that the law was in conflict with the Fourteenth Amendment, because producers of agricultural products and live-stock were exempted from the operation of its provisions.

In *Santa Clara County vs. Southern Pacific R. R. Co., 118 U. S. 394,* the question was presented as to the constitutionality of a statute of California, prescribing the method of taxing railroad property. The right of a State to tax railroad property by a rule different from that applied to other property was upheld, but it was also held that the property so taxed must be such property as is peculiarly

used for railroad purposes. It was sought to tax the fences of the Railroad Company under the statute, but this Court held that the railroad fences could not be taxed in a manner different from other fences in the State.

The concurring opinion of Mr. Justice Field in the companion case of *San Bernardino County vs. S. P. R. R. Co., 118 U. S. 422*, is especially appropriate to the contention of defendant in the case at bar, that one sugar refiner cannot be taxed by a different rule from another sugar refiner; or stronger still, that one sugar refiner cannot be taxed while another is wholly exempted.

We respectfully submit that the business of sugar refining carried on by defendant constitutes defendant a manufacturer, and that if the Court shall so conclude, it should so hold and apply Article 206 of the Constitution of the State of Louisiana to such conclusion. If, on the other hand, the Court shall not so conclude, then we submit that the law under which defendant is sought to be taxed denies to defendant the equal protection of the laws of the State of Louisiana and is in conflict with the Fourteenth Amendment to the Constitution of the United States; and that the judgment of the Supreme Court of Louisiana herein brought up for review should be reversed.

Respectfully submitted,

JOHN E. PARSONS,
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Attorneys for The American Sugar Refining Company, Plaintiff in Error.

OCTOBER, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 264.

THE AMERICAN SUGAR REFINING COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA AND JOHN BREWSTER, STATE TAX COLLECTOR, SECOND DISTRICT, PARISH OF ORLEANS, STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

MOTION TO DISMISS OR AFFIRM AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes the State of Louisiana and JOHN BREWSTER, State Tax Collector of the Second District, City of New Orleans, defendants in error, by their undersigned counsel, and moves to dismiss this writ of error because (1) this Honorable

Court is without jurisdiction to determine the controversy which this record presents.

(2) That there is not necessarily involved any issue of fact or law arising under the Constitution and laws of the United States.

(3) That the claim made by plaintiff in error in its answer, that Sec. 9 of Act 150 of 1890 of the General Assembly of the State of Louisiana, discriminated against it, and denies to it the equal protection of the law secured to all persons by the fourteenth amendment of the Constitution of the United States, in that said Section 9 imposed a license tax on refiners of sugar who were not planters, does not present a Federal question, for such question was not the principal matter litigated, but was put in the record for the purpose of obtaining this writ of error. And without waiving the foregoing, but persisting therein, and urging same as well founded, your movers, availing themselves of the right under Rule 6, Sec. 5 of the Rules of this Honorable Court, move to unite with the motion to dismiss this, their motion to affirm, upon the ground that even if this record discloses that this Court has jurisdiction, it is manifest the writ was taken for delay only, and the question upon which such alleged jurisdiction depends is so frivolous as not to need further argument.

Wherefore, movers pray that this motion to dismiss be granted and the writ of error dismissed for want of jurisdiction; but should said motion be not allowed for the reasons set forth, the judgment of the Supreme Court of Louisiana be finally affirmed with costs, and movers pray for such other and necessary relief which the nature of the case may require.

E. HOWARD MCCALEB,
Attorney for Defendant in Error.

ARGUMENT ON MOTION TO DISMISS.

Action was instituted by the State of Louisiana against the American Sugar Refining Company, plaintiff in error, to compel payment of a license tax for the years 1892 to 1897, inclusive, under provisions of Sec. 9 of Act 150 of 1890 of the General Assembly of Louisiana (R. p. 2). Section 9 of said act provided: "That for carrying on each business of "gas light, * * * *refining sugar and molasses* * * * the "license shall be based on the gross annual receipts of each "person, association of persons, business firms or corpora- "tions engaged in said business, as follows, provided, that "this section shall not apply to planters and farmers grind- "ing and refining their own sugar and molasses, or gin- "ning their own cotton or that of their tenants, or manu- "facturing their own cotton seed into meal, cake or oil, or "work by machinery for plantation or farm purposes, * * * "and provided further that it shall not apply to those plan- "ters who granulate syrup for other planters during the "rolling season.

"*First Class*—When the said gross annual receipts are "Two Million Five Hundred Thousand ($2,500,000) Dollars "or over, the license shall be $3500."

The license is graduated into twenty classes, plaintiff in error falling into the *first class*, it being admitted that its gross annual receipts exceeded during each of the years named the sum of two and a half million dollars (R., pp. 11 and 12).

In its answer the American Sugar Refining Company, plaintiff in error, claimed that the refining of sugar and molasses was manufacturing, and because of its business as refiners conducted by means of mechanical appliances, it was engaged in a mechanical pursuit, and was thereby exempted

from license taxation under Art. 206 of the Constitution of Louisiana of 1879, which excepts from taxation such persons "engaged in mechanical, agricultural, horticultural and mining pursuits and manufactories."

The claim is then made that "The Act No. 150 of 1890 "violates the Constitution of the United States, and is void "in so far as it attempts to impose a license tax on this de- "fendant, because said act denies to this defendant the equal "protection of the law of the State, inasmuch as said act "does not impose equally a license tax on all persons en- "gaged in the business of refining sugar and molasses, but "discriminates in favor of planters who granulate syrups "for other planters during the rolling season, and therefore "said act conflicts with the fourteenth amendment of the "Constitution of the United States, which prohibits any "State from depriving a person of his property without due "process of law and from denying to any person within its "jurisdiction the equal protection of the law."

Perusal of this record clearly discloses that, the principal and only matter litigated, and decided adversely to plaintiff in error (R., p. 42) was the issue of exemption *vel non* from taxation as a manufacturer under the provisions of Art. 206 of the State Constitution and Act 150 of 1890. Of such, this Court has no concern, for it is universally recognized that where there is no Federal question, the construction of State statutes and constitutions by the highest court of a State can not be inquired into. Bisland vs. Provosty, 14 La. An. 169, 174; Am. and Eng. Enc. of Law, Vol. 27, p. 610, Vol. 21, p. 283; 107 U. S. 120; 125 U. S. 555; 142 U. S. 293; Hermann on Estoppel, Vol. 1, p. 684.

Considering the rule of construction of the statutes and Constitution of the State by the Supreme Court of Louisiana to be final, and considering the admission of record that

plaintiff in error is not engaged in the business of granulating syrups, nor is it a planter, or farmer, nor does it manufacture its own sugar and molasses, nor does it granulate syrups for planters during the rolling season, no Federal question is involved, and the decision on the claim of a Federal nature set up in the answer was unnecessary. It therefore follows that the decision of the Supreme Court of Louisiana, resting upon a non-federal question, is of itself sufficient to support the judgment.

This rule is reiterated in Bacon vs. Texas, 163 U. S. 207, and decisions there cited, that—

> "Where there are two grounds for the judgment of a State "Court one only of which involves a Federal question, and the other "is broad enough to maintain a judgment sought to be reviewed, "this Court will not look into the Federal question.
>
> "When a State Court has based its decision on a local or State "question and this Court in consequence finds it unnecessary to "decide a Federal question raised by the record the logical course "is to dismiss the writ of error."

See also White vs. Leovy, 174 U. S., p. 95.

Remington Paper Co. vs. Watson, 173 U. S. 443.

Eustis vs. Bolles, 150 U. S. 361.

California vs. Halliday, 159 U. S. 415.

Rutland vs. Central, 159, 630.

Gillis vs. Stinchfield, 159 U. S. 658.

Senaca vs. Christy, 162 U. S. 783.

We respectfully pray that the motion to dismiss be maintained.

ARGUMENT ON THE MOTION TO AFFIRM.

That the federal question presented by the answer was not the principal matter litigated, but was put in the record for the purpose of obtaining this writ of error and further delays, requires no demonstration. There is color for a motion to

dismiss which presents for consideration this motion to afirm even if it should be held that the federal question is not as frivolous as we maintain.

East Tenn. vs. Frazier, 139 U. S. 288, 292.

Douglas vs. Wallace, 161 U. S. 346.

In Thormann vs. Frame, 176 U. S. page 350, it is said.

> "However, while we think that on the record there was color for "the motion to dismiss we shall decline to sustain that motion in- "asmuch as the Supreme Court in its opinion considered the par- "ticular question here presented but will dispose of the case on the "motion to affirm, as the ruling of that Court so far as open to our "examination is so obviously correct under the circumstances that "further argument is unnecessary."

The opinion of the lower court holds in substance that defendant is not a manufacturer within the intendment of Art. 206 of the Constitution of 1879 and Act 150 of 1890, Sec. 9. Plaintiff in error admits it is not a planter or farmer refining his or its own sugar or molasses, nor a planter who granulates syrups for other planters during the rolling season. These admissions rendered the decision on the federal question unnecessary, thereby giving color for the motion to dismiss. Sec. 9 of Act 150 of 1890 classifies two different occupations—the refiner who purchases, refines and sells—the agriculturist who manufactures his own products. In the former class no person similarly situated is excepted, and, therefore, defendant can not complain; in the latter class the exception springs from the Constitution of Louisiana (1879) Art. 206. The planter who refines his own sugar is likened unto the tailor who scours his own clothes, or the clothes of his making, while the refiner is likened to the case of the scourer, who buys clothes from the tailor and sells them after the scouring process. Thus, the planter who refines his own sugar belongs to a different class, and is engaged in a different kind of

business from the person who purchases manufactured sugar and sells the same after the refining process. Really, the planter is the manufacturer of sugar, and the refining by him is merely a process of cleaning or purifying, and though not necessarily connected with his occupation as a manufacturer, is an incident thereto.

It is therefore clear that if there is no discrimination in favor of one as against another *of the same class*, equal protection of the law is afforded, for it is axiomatic in the jurisprudence of this Court, that special legislation is not obnoxious to the last clause of the Fourteenth Amendment if all persons subject to it are treated alike. In Giozza vs. Tiernan, it was held that the Fourteenth Amendment was not intended to compel the States to adopt an iron rule of equality as to taxation, or to prevent the classification of property for taxation at different rates, or to prohibit legislation in that regard, special either in the extent to which it operates or the subjects sought to be attained. It is enough that there is no discrimination in favor of one as against another of the asme class.

Giazza vs. Tiernan, 148 U. S. 657, Missouri Pacific Railroad Company vs. Mackay, 127 U. S. 205.

Minneapolis & St. Louis Railroad Company, Herrick 127 U. S. 210.

Duncan vs. Missouri, 152 U. S. 377.

Walston vs, Nevin, 128 U. S. 578.

Columbus Railroad Company vs. Wright, 151 U. S. 470.

Pittsburg, C. C. & St. Louis Railroad vs. Backus, 154 U. S. 421.

Charlotte Railroad Company vs. Gibbs, 142 U. S. 386.

Pacific Express Company vs. Seibert, 142 U. S. 339.

Santa Clara County vs. Railroad Company, 118 U. S. 394.

Milling Company vs. Penna, 125 U. S. 187.
Murtes vs. Holland, 114 U. S. 606.
Railroad Company vs. Richmond, 96 U. S. 321.
Express Co. vs. Seibert, 142 U. S. 339, is analagous.

"The legislation in question can not be considered as invidiously "discriminating against the express companies defined by it in "favor of other companies or persons that may carry express "matter on certain other conditions or under different circum- "stances. There is an essential difference between express com- "panies defined by this act and railroad and steamboat companies "or other companies that own their own means of transportation.

"The vital question is this: Railroad companies pay taxes on "their roadbeds, rolling stock and other tangible property, etc.

"This distinction clearly places express companies defined by "this act in a separate class from other companies owning their "own means of transportation. They do not do business under "the same conditions or under similar circumstances. In the "nature of things and irrespective of the definitive legislation in "question, they belong to different classes. There can be no "objection, therefore, to the discrimination made as between "express companies defined by this act and other companies "or persons incidentally doing a similar business by different "means and methods in the manner in which they are taxed."

We, therefore, pray if the motion to dismiss be not allowed that this motion to affirm be maintained and a judgment of affirmance be granted accordingly.

E. Howard McCaleb,
Attorney for Defendant in Error.

Supreme Court of the United States.

No. 38.—October Term, 1900.

The American Sugar Refining Company, Plaintiff in Error, vs. The State of Louisiana et al. } On writ of error to the Supreme Court of Louisiana.

[November 5, 1900.]

This was a petition filed in the Civil District Court for the Parish of Orleans by John Brewster, tax collector, against the American Sugar Refining Company, a corporation engaged in the business of refining sugar and molasses, to recover the sum of $3,500 per year as a State license tax for the years 1892 to 1897, inclusive, alleged to be due under a statute of Louisiana enacted in 1890, entitled "An act to levy, collect and enforce payment of an annual license tax upon all persons, associations of persons or business firms and corporations pursuing any trade, profession, vocation, calling or business, except those who are expressly excepted from such license tax by articles 206 and 207 of the constitution."

By the ninth section it is enacted "that for carrying on each business of . . . refining sugar and molasses . . . the license shall be based on the gross annual receipts of each person, association of persons, business firm or corporation engaged in said business as follows: Provided, that this section shall not apply to *planters and farmers grinding and refining their own sugar and molasses;* . . . And provided further, that it shall not apply to those planters who granulate syrup for other planters during the rolling season."

First class. When the said gross actual receipts are $2,500,000 and over the license shall be $3,500.

This act was passed in pursuance of Article 206 of the State constitution of 1879, which reads as follows:

"Art. 206. The general assembly may levy a license tax, and in such case shall graduate the amount of such tax to be collected from the persons pursuing the several trades, professions, vocations and callings. All persons, association of persons and corporations pursuing any trade, profession, business or calling may be rendered liable to such tax, except clerks, laborers, clergymen, school teachers, those engaged in mechanical, agricultural, horticultural and mining pursuits and *manufacturers*, other than those of distilled, alcoholic or malt liquors, tobacco, cigars and cotton seed oil. No political corporation shall impose a greater license tax than is imposed by the general assembly for State purposes."

Defense: First, that the business of refining sugar and molasses is exempt from the payment of any license tax, because it is one of those *manufactures* enumerated in Article 206 as entitled to exemption. Second, that the act of 1890 "violates the Constitution of the United States, and is void in so far as it attempts to impose a license tax on this defendant, because said act denies to this defendant the equal protection of the laws of the State, inasmuch as said act does not impose equally a license tax on all persons engaged in the business of refining sugar and molasses, but discriminates in favor of planters who refine their own sugar and molasses, and in favor of planters who granulate syrups for other planters during the rolling season."

The court, being of opinion that the business carried on by the defendant company was that of a manufacturer, dismissed the petition. On appeal to the Supreme Court, that court was of opinion that the defendant was not entitled to exemption under Article 207 of the constitution, (not now in question,) which exempted certain manufactures, and ordered a judgment for $3,500 with interest and costs for the license tax for the year 1897. But, upon the attention of the court being called by a petition for rehearing to Article 206 of the constitution, above quoted, that court delivered a new opinion to the effect that the defendant was not a manufacturer, and therefore not entitled to an exemption by Article 206, and that the exemption of planters who refine their own sugar did not deprive the defendant of the equal protection of the laws. It further revised its judgment, and held the State entitled to recover for each of the years from 1892 to 1897, and rendered judgment for the sum of $3,500, for each of said years. Whereupon defendant sued out a writ of error from this court.

Mr. Justice Brown delivered the opinion of the Court.

Motion was made to dismiss this writ of error upon the ground that the case did not present a Federal question, inasmuch as the question of illegal discrimination "was not the principal matter litigated, but was put in the record for the purpose of obtaining this writ of error." As, however, the protection of the Fourteenth Amendment was invoked in the answer, and, as this defense is at least plausible upon its face, the motion to dismiss must be denied; but, the case having also been submitted upon the merits, we shall proceed to discuss the constitutional objection to the act.

It is scarcely necessary to say that the question whether the defendant were a *manufacturer* within the meaning of the Louisiana constitution is one dependent upon the construction of that constitution, and that the interpretation given to it by the State Supreme Court, raising as it does no question of contract, is obligatory upon this court; but as that court held the defendant liable upon the ground that it was engaged in the busi-

ness of refining sugar, the further question is presented whether it is denied the equal protection of the laws because of the exemption from the tax of planters grinding and refining their own sugar and molasses.

The act in question does undoubtedly discriminate in favor of a certain class of refiners, but this discrimination, if founded upon a reasonable distinction in principle, is valid. Of course, if such discrimination were purely arbitrary, oppressive or capricious, and made to depend upon differences of color, race, nativity, religious opinions, political affiliations or other considerations having no possible connection with the duties of citizens as taxpayers, such exemption would be pure favoritism, and a denial of the equal protection of the laws to the less favored classes. But from time out of mind it has been the policy of this government, not only to classify for purposes of taxation, but to exempt producers from the taxation of the methods employed by them to put their products upon the market. The right to sell is clearly an incident to the right to manufacture or produce, and it is at least a question for the legislature to determine whether anything done to prepare a product most perfectly for the needs of the market shall not be treated as an incident to its growth or production. The act is not one exempting planters who use their sugar in the manufacture of articles of a wholly different description, such as confectionery, preserves or pastry, or such as one which should exempt the farmer who devoted his corn or rye to the making of whiskey, while other manufacturers of these articles were subjected to a tax. A somewhat different question might arise in such case, since none of these articles are the natural products of the farm—such products only becoming useful by being commingled with other ingredients. Refined sugar, however, is the natural and ultimate product of the cane, and the various steps taken to perfect such product are but incident to the original growth.

With reference to the analogous right of importation, it was said by this court at an early day in *Brown* v. *Maryland*, (12 Wheat. 419,) that the right to sell was an incident to the right to import foreign goods, and that a license tax upon the sale of imported goods, while still in the hands of the importer in their original packages, was in conflict with that provision of the Constitution which prohibits a State from laying an impost or duty upon imports.

Congress, too, has repeatedly acted upon the principle of the Louisiana statute. Thus, after having imposed by act of August 2, 1813, a license tax upon the retailers of wines and spirits, for the purpose of providing for the expense of the war with Great Britain, it was further enacted by an act of February 8, 1815, (3 Stat. 205,) that it should not be construed "to extend to vine dressers who sell at the place where the same is made, wine of their own growth, nor shall any vine dresser for vending solely where the same is made, wine of his own growth, be

compelled to take out a license as a retailer of wines." So, too, in the Internal Revenue Act of 1862, (12 Stat. 432,) a license tax was imposed (sec. 64) upon retail dealers in all goods, wares and merchandise, but with a proviso, in section 66, that the act should not be construed "to require a license for the sale of goods, wares and merchandise made or produced and sold by the manufacturer or producer at the manufactory or place where the same is made or produced; to vinters who sell, at the place where the same is made, wine of their own growth; nor to apothecaries, as to wines or spirituous liquors which they use exclusively in the preparation or making of medicines for lame, sick or diseased persons." Another paragraph of the same section (64) exempts distillers, who sell the products of their own stills, from a tax as wholesale dealers in liquors. While no question of the power of Congress is involved, these instances show that its general policy does not differ from that of the act in question, and that the discrimination is based upon reasonable grounds.

So, too, this court has had repeated occasion to sustain discriminations founded upon reasons much more obscure than this. Thus in *Railroad Company* v. *Richmond*, (96 U. S. 521,) a municipal ordinance was sustained declaring that no car or vehicle of any kind "belonging to or used by the Richmond, Fredericksburg and Potomac Railroad Company shall be drawn or propelled by steam" upon a certain street, although no other company was named in the ordinance, the court held that as no other corporation had the right to run locomotives in that street, no other corporation could be in a like situation, and that the ordinance, while apparently limited in its operation, was general in its effect, as it applied to all who could do what was prohibited. "All laws should be general in their operation, and all places within the same city do not necessarily require the same local regulation. While locomotives may with very great propriety be excluded from one street, or even from one part of a street, it would be unreasonable to exclude them from all." In *Pembina Mining Co.* v. *Pennsylvania*, (125 U. S. 181,) it was decided that the equal protection clause did not prohibit a State from requiring, for the admission within its limits of a corporation of another State, such conditions as it chooses, though in that case it exacted a license tax from such corporations, which it did not exact from corporations of its own creation. In *Missouri Railroad Co.* v. *Mackey*, (127 U. S. 205,) it was said that this clause did not forbid special legislation, "and when legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws, if all persons brought under its influence are treated alike under the same conditions." To the same effect is *Walston* v. *Nevin*, (128 U. S. 578.)

The power of taxation under this provision was fully considered in *Bell's Gap Railroad Co.* v. *Pennsylvania*, (134 U. S. 232,) in which it was said

not to have been intended to prevent a State from changing its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property altogether; may impose different specific taxes upon different trades or professions; may vary the rates of excise upon various products; may tax real and personal estate in a different manner; may tax visible property only and not securities; may allow or not allow deductions for indebtedness. "All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State legislature or the people of the State in framing their constitution." See also *Home Insurance Company* v. *New York*, (134 U. S. 594;) *St. Louis &c. Rwy. Co.* v. *St. Paul*, (173 U. S. 404.)

In *Pacific Express Company* v. *Seibert*, (142 U. S. 339,) a State statute defining an express company to be such as carried on the business of transportation on contracts for hire with railroad or steamboat companies, did not invidiously discriminate against the express companies defined by it, by exempting other companies carrying express matter in vehicles of their own. This case is specially pertinent to the one under consideration. See also *Giozza* v. *Tiernan*, (148 U. S. 857;) *Columbus Railroad Co.* v. *Wright*, (151 U. S. 470;) *Duncan* v. *Missouri*, (152 U. S. 377;) *Western Union Telegraph Co.* v. *Indiana*, (165 U. S. 304;) *Adams Express Co.* v. *Ohio State Auditor*, (165 U. S. 194.)

The constitution of Louisiana classifies the refiners of sugar for the purpose of taxation into those who refine the products of their own plantations, and those who engage in a general refining business, and refine sugars purchased by themselves or put in their hands by others for that purpose, imposing a tax only upon the latter class. To entitle a party to the exemption it must appear (1) that he is a farmer or a planter; (2) that he grinds the cane as well as refines the sugar and molasses; (3) that he refines his own sugar and molasses, meaning thereby the product of his own plantation. Whether he may also refine the sugar of others may be open to question; although by its express terms the act does not apply to planters who granulate syrup for other planters during the rolling season. The discrimination is obviously intended as an encouragement to agriculture, and does not deny to persons and corporations engaged in a general refining business the equal protection of the laws.

The judgment of the Supreme Court of the State of Louisiana is

Affirmed.

Mr Justice HARLAN concurred in the result.

Mr. Justice WHITE did not participate in the decision of this case.